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INTRODUCTION

Justice is a machine that, when someone has given it a starting push, rolls on of itself The underlying principles of justice do not change, but the complex pattern of life that is never static requires a fresh outlook and constant moulding of old principles to suit new conditions, ideas and ideals It is true that the Courts do not legislate, but it is not true that they do not mould and make the law in the process of their interpretation and application of laws to concrete facts. Each decision has a generating power and becomes a fresh stock of descent. But they alone survive which are fit to survive The theory of precedent endeavours to maintain the continuing authority of a decision even when giving it a new shape or form or twist There is much to be said for Justice Hegde's view[1], that, in law, finality is of utmost importance ; that legal problems should not be treated as mere subjects for mental exercise ; and that reconsideration of decisions of the Supreme Court should be confined to questions of great public importance But law marches on steadily and relentlessly During the year under review, about 47 decisions of the Supreme Court have appeared in the columns of this Journal besides almost all the important decisions of our High Court An attempt is made hereunder to refer to the decisions so rendered under some of the familiar and fairly important titles of law.

THE COURTS . THEIR JURISDICTION AND POWERS

In *Bhagat Raja* v *The Union of India*[2], the Supreme Court points out that inasmuch as the decisions of Tribunals in India are subject to the supervisory powers of the High Court under Article 227 of the Constitution and of the appellate powers of the Supreme Court under Article 136, the least that a Tribunal could do is to disclose its mind and give a reasoned order so as to enable an appellate or supervisory Court to keep the Tribunal within bounds *Abdul Malick* v. *Collector of Dharmapuri*[3], lays down that an Authority (*e g* , a Member of the Board of Revenue) cannot go into the correctness of the decision of a High Court ; that it is bound to administer the law as declared and propounded by the High Court ; that the Member of the Board cannot take upon himself the function of interpreting the law and coming to a different conclusion from that arrived at by the High Court; and that his reliance on two judgments of the High Court rendered *per incuriam* which have no force as precedents would amount to an error apparent on the face of the record. *Sivaraj* v. *Sadasivam Pillai*[4], holds that the contention that during the summer recess the Vacation Judge was the only Judge who had jurisdiction and the regular Subordinate Judge had no jurisdiction is untenable, and that the provision vesting jurisdiction in the Vacation Civil Judge is not intended to take away the jurisdiction which previously the Subordinate Judge had to dispose of a matter which was properly pending before him, if he was inclined to work during the vacation and if the parties raised no objection thereto.

1. (1968) 1 M L J (S C) 135, 147.
2. (1968) 1 M.L.J. (S.C.) 77.
3. (1968) 1 M L.J. 9.
4. (1968) 1 M.L.J. 195.

Constitutional Law.

In *State of Andhra Pradesh* v. *Nalla Raja Reddy*[1], the Supreme Court makes it clear that the two tests to ascertain whether a classification is permissible or not with reference to Article 14 of the Constitution are, that (1) the classification must be founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) the differential treatment must have a rational relation to the object sought to be achieved by the statute in question; that a statutory provision may offend Article 14 by finding differences where there are none and by making no difference when there is one, that these principles are equally applicable to taxing statutes; that while a Court may concede a larger discretion to the Legislature in the matter of fiscal adjustment, it will insist that a fiscal statute, just like any other statute, cannot infringe Article 14 by introducing unreasonable discrimination between persons or property either by classification or lack of classification, and that the Andhra Pradesh Land Revenue (Additional Assessment and Cess Reduction) Act, 1962, as amended by Andhra Pradesh Act XXIII of 1962 offends Article 14 and is hence invalid In *Andhra Sugars Ltd* v. *State of Andhra Pradesh*[2], the Supreme Court expresses the view that the differential treatment of the factories producing sugar by means of vacuum pans, khandasari units producing sugar by the open pan process, and cane growers using cane for the manufacture of jaggery is reasonable and has a rational relation to the object of taxation, that the Legislature could reasonably treat the three sets of users of cane differently for the purpose of levy; and that section 21 of the Andhra Pradesh (Regulation of Supply and Purchase) Act, 1961, is not violative of Article 15 In *Virudhunagar S. R. Mills Ltd* v. *Government of Madras*[3], the Supreme Court decides that the provisions of section 12 of the Madras Electricity (Taxation on Consumption) Act, 1962, that where energy under High Tension Supply is consumed in the process of manufacturing or producing the principal product in any undertaking licensed under the Ceneral Act—the Industries (Development and Regulation) Act, 1951, no electricity tax shall be payable on the energy so consumed for a period of three years from the date of the commencement of the manufacture or production of the principal product in such undertaking is not hit by Article 14 and that the exemption granted thereunder is based on sound principle. In *Messrs Sri Tirumala Venkateswara Timber & Bamboo Firm* v *Commercial Tax Officer, Rajahmundry*[4], the Supreme Court makes it clear that the real effect of *Explanation III* to section 2 (1) (3), Andhra Pradesh General Sales Tax Act, 1957, was only to impose a tax only when there was a transfer of title to the goods and not where there was a mere contract of agency, and that *Explanation III* is not violative of Article 14 as the classification is based upon an intelligible differentia and has a rational relationship with the object sought to be achieved by the statute *T S Baliah* v *T. S Rangachari*[5], expresses the view that section 297 (2) (*b*) of the Income-tax Act, 1961, is not violative of Article 14 since the discrimination made between the persons who filed returns before the commencement of the Act who must be taken as one class and the persons who filed the returns after the commencement of the Act as another would be a justifiable classification. *Perumal Naidu* v. *Krishnaswamy Naidu*[6], holds that the position of a person who ageed to take an oath is essentially and basically different from the position of a person who agreed to abide by the taking of such an oath and no question of unconstitutionality arises with reference to section 12 of the Oaths Act as opposed to Article 14. In *P. Rajendran* v. *State of Madras*[7], the Supreme Court decides that the question whether districtwise allocation of seats to Mecial Colleges is violative of Article 14 will depend on what is the object to be achieved in the matter of admission to Medical Colleges; that as the object is to get the best talent for admission to professional Colleges, the allocation of seats districtwise has no reasonable relation to the object to be achieved; that if anything such allocation

1. (1968) 1 M L J. (S C) 9.
2. (1968) 1 M L J. (S C.) 117.
3. (1968) 2 M L J. (S.C) 92.
4. (1968) 2 M.L.J. (S.C.) 64.
5. (1968) 2 M L J. 451.
6. (1968) 2 M L.J. 477.
7. (1968) 2 M.L.J. (S.C.) 121.

will result in many cases in the object being destroyed and that if that is so, the classification, even if reasonable, would result in discrimination inasmuch as a better qualified candidate from one may be rejected while a less qualified candidate from the other districts may be admitted; and that there is no justification for districtwise allocation which results in discrimination, even assuming that the candidates from the Madras City will get a larger number of seats in proportion to the population of the State. *Godrej & Boyce Manufacturing Co. Private Ltd* v. *Special Tahsildar, Land Acquisition*[1], decides that when the policy of the State would appear to be to encourage industrialists to start industries in this part of the country there is no reason why the very same Government should thwart the ambitious plans of a reputed manufacturer to start and expand his activities in South India and seek acquisition of the lands purchased by him for allotment to other industries, and that such action on the part of Government would be arbitrary amounting to violation of Articles 14 and 19. *Devasahayam* v. *State of Madras*[2], holds that from Articles 14, 15 and 16 it is clear that a Government servant is entitled to equality of treatment in respect of matters relating to employment under Article 16 (1) and that would include provisions as to leave, gratuity, pension, age of superannuation, etc , that the age of retirement of a Government servant fixed at 55 years excepting in the case of nine categories rested on an intelligible classification resting on dearth of officers in particular services; and that the order of the State Government retiring the petitioner at 55 was not illegal. In *State of Andhra Pradesh* v *P. Sagar*[3], the Supreme Court lays down that the list prepared on the basis of reservations for socially and educationally backward classes is indisputably a list communitywise, that in the context in which it occurs the expression " class " means a homogeneous section of the people grouped together because of certain likeness or common traits and who are identifible by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like, that in determining whether a particular section forms a class, caste cannot be excluded altogether, but in the determination of a class a test solely based upon the caste or community cannot also be accepted; that clause (4) of Article 15, being an exception to clause (1), cannot be extended so as in effect to destroy the guarantee of clause (1), that the Parliament has by enacting clause (4) attempted to balance as against the right of equality of citizens the special necessities of the weaker sections of the people by allowing a provision to be made for their advancement; that in order that effect may be given to clause (4), it must appear that the beneficiaries of the special provision are classes which are backward socially and educationally and they are other than the Scheduled castes and Scheduled tribes and that the provision is made for their advancement; that reservations may be adopted to advance the interests of weaker sections of society, but in doing so, care must be taken to see that deserving and qualified candidates are not excluded from admission to higher educational institutions, that the criterion for determining the backwardness must not be based solely on religion, race, caste, sex or place of birth, and the backwardness being social and educational must be similar to the backwardness from which the Scheduled castes and Scheduled tribes suffer, that Article 15 guarantees by the first clause a fundamental right of far-reaching importance to the public generally, that within certain defined limits an exception has been engrafted upon the guarantee of freedom in clause (1), but being in the nature of an exception, the conditions which justify departure must be strictly shown to exist, that when a dispute is raised before a Court that a particular law which is inconsistent with the guarantee against discrimination is valid on the plea that it is permitted under clause (4) of Article 15, the assertion by the State that the officers of the State had taken into consideration the criteria which had been adopted by the Courts for determining who the socially and educationally backward classes of the society are, or that the authorities had acted in good faith in determining the socially and educationally backward classes of citizens, would not be sufficient to sustain the validity of the claim, that the Courts of the country are invested with the power to determine the validity of the law which

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1. (1968) 2 M.L.J. 273.
2. (1968) 2 M.L.J. 140.
3. (1968) 2 M.L.J. (S.C.) 114.

infringes the fundamental rights of citizens and others and when a question arises whether a law which *prima facie* infringes a guaranteed fundamental right is within the exception, the validity of that law has to be determined by the Courts on materials placed before them, that by merely asserting that the law was made after full consideration of the relevant evidence and criteria which have a bearing thereon, and was within the exception, the jurisdiction of Courts to determine whether by making the law a fundamental right has been infringed is not excluded, that whether in the examination the correct criteria were applied is not a matter on which any assumption could be made especially when the list prepared is *ex facie* based on castes or communities and was substantially the list which was struck down by the High Court in another case, that the validity of a law which apparently infringes the fundamental rights of citizens cannot be upheld merely because the law-maker was satisfied that what he did was right or that he believes that he acted in a manner consistent with the constitutional guarantees of the citizen, and that the test of the validity of a law alleged to infringe the fundamental rights of a citizen or any act done in execution of that lies not in the belief of the maker of the law or of the person executing the law, but in the demonstration by evidence and argument before the Courts that the guaranteed right is not violated *Rangaswamy* v. *Commissioner, Coimbatore Municipality*[1], takes the view that Rule 14 of the Personal Conduct of Officers and Servants of Municipal Councils Rules framed under the Madras District Municipalities Act, 1920, deals with an entirely different matter from the freedom to form associations and unions guaranteed by Article 19 (1) (*e*), that Rule 14 is designed in the interests of discipline and good conduct on the assumption that the participation of Government servants in politics in any of the specific ways mentioned in the rule will not be conducive to discipline or to the efficient conduct of the administration, that taking part in politics by Government servants must be viewed as objectionable conduct on their part and not confused with the several freedoms mentioned in Article 19, and that Rule 14 cannot therefore be struck down as unconstitutional *Viswanathan* v *Ganapathi Iyer*[2], holds that though section 4 of the Partition Act in so far as it provides for the compulsory sale of the share of the stranger-purchaser to one or more of the members of the family who apply for the same is a restriction on the right to hold and dispose of the property, the restriction being a reasonable one and in public interest is not violative of Article 19 (1) (*f*) *Ananthanarayanan* v *State of Madras*[3], lays down that when one department of the Government has punished a person for an offence another department of the same Government cannot proceed against the person for the same offence in order to give him a more deterrent punishment, and that such a course will be violative of Article 20 (2) In *P D Sharma* v. *State Bank of India*,[4] the Supreme Court points out that the fact, that in his application before the Supreme Court for Special Leave against the order of the High Court dismissing his application under Article 226 the applicant had not mentioned that his application under Articles 132 and 133 (1) was then pending before the High Court, should not be a ground for revoking the Special Leave granted where it was not a deliberate suppression, and that the scope of an appeal under Article 136 is much wider than a petition under Article 226 since in an appeal under Article 136 the Court can go into question of fact as well as of law, whereas the High Court in a writ petition could have only to consider the question strictly relevant in an application for a writ of *certiorari*. In *Virudhunagar Steel Rolling Mills Ltd* v. *Government of Madras*[5], the Supreme Court makes it clear that once a petition under Article 226 is dismissed it will operate as a bar to the petitioner seeking the same relief under Article 32 before the Supreme Court and the principles of *res judicata* will apply in such cases, but where a petition is dismissed *in limine* and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend on the nature of the order, that if such an order

(To be continued.)

1. (1968) 1 M L J. 329
2 (1968) 2 M L J. 19.
3. (1968) 2 M.L J. 443.
4 (1968) 2 M L.J. (S.C) 134.
5 (1968) 2 M L J. (S C.) 92.

is on the merits it would operate as a bar; if however, the petition is dismissed *in limine* without passing a speaking order then such a dismissal cannot be treated as creating the bar of *res judicata*; that where a writ petition under Article 226 is dismissed by the High Court without notice to the other side but the order of dismissal is a speaking order and the petition is disposed of on merits that would still amount to *res judicata* and would bar a petition for the same relief under Article 32; and that the proper remedy of the party in such cases will be to come upon appeal even though the High Court may not have issued notice to the other side. *Workers Union* v. *Management of United Bleachers*[1], holds that the High Courts can issue under Article 226 prerogative writs and other directions or orders which would enable the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country, that some limitations are implicit in the Article for the purpose of directing the power through defined channels, and that the limitations envisaged would not limit however the power of the High Court to grant the relief of reinstatement to a worker when it finds that the order of the Labour Court directing payment of compensation in lieu of reinstatement is erroneous *Surulichamy* v *Jeggiappan*[2], lays down that where a relief asked for in a writ petition is for the issue of a writ of *quo warranto* or a writ of *mandamus* or such other writ which the Court may deem fit and proper, the Court is entitled to grant relief which is appropriate taking into consideration the facts of the case when it finds that a writ of *quo warranto* or *mandamus* would not lie *Secretary, Co-operative Supply etc.* v *Kumaravelu*[3], points out that the interpretation relating to the constitution of a bye-law is one of law and therefore the High Court can interfere under Article 226 *Rajasthan Investment Corporation* v *Deputy Commercial Tax Officer*[4], states that where a direction in a notice under section 46 (1) (*a*) and (1) (*b*) of the Madras General Sales Tax Act, 1959, is patently illegal and without jurisdiction the petitioner can ask for a writ of prohibition even though the alternative remedy of revision against the order is available *Swami Motor Transports* v *Murugan Transports*[5], makes it clear that there is no rule of law that a writ petition cannot be filed without some delay or that the delay cannot exceed a particular time limit, such as six months, and that Courts have held that six months would be a reasonable period of time for a party to invoke the jurisdiction under Article 226 but, naturally, everything will depend on the circumstances of the case *Ramanujam* v. *Zonal Manager, L I C*[6], holds that it is now well-settled that, in this country, the writ proceedings under the provisions of the Constitution would be available against breach of any of statutory provisions by a public body even though the relationship between the aggrieved person and the statutory body may be that of an employee and employer under a contract of service. *Gabriel* v. *State Housing Board*[7], points out that where the punishment of dismissal from service imposed on a public servant cannot be said to be contrary to the rules the High Court cannot interfere with the same in writ proceedings merely because it is of the view that the punishment is severe *Jayaram* v *Sri Rama Vilas Service Ltd*[8] holds that a question which is raised for the first time and which would involve a decision on disputed questions of facts should not be allowed to be urged in a writ petition under Article 226 *Rangaswamy* v. *Coimbatore Municipality*[9], makes it clear that a finding on evidence that a municipal servant actively participated or assisted in the activities of a political party cannot be assailed in a writ proceeding *Subbammal* v. *State of Madras*[10], holds that it would be a colourable exercise of its powers under the Land Acquisition Act for the Government to acquire land under the name of ' public purpose ' to provide quarters for certain persons on application by them, when the Government did not contributre even a paise to the compensation payable to the owner of the land from out of the public revenues and that the whole proceedings were liable to be quashed *Rajaram* v.

1. (1968) 1 M L J 99.
2. (1968) 1 M L J 258.
3. (1968) 1 M L J. 379.
4. (1968) 1 M L J. 399.
5. (1968) 1 M.L.J 446.
6. (1968) 2 M L J. 21.
7. (1968) 2 M L J. 226.
8. (1968) 2 M L J 433.
9. (1968) 1 M L J 169.
10. (1968) 2 M L.J. 190.

Chinnathurai[1], decides that an order disqualifying a person for election as a member of a Panchayat Board on the ground that he was a lessee of the coconut *tope* belonging to the Panchayat on the date of his nomination when nothing remained to be done by the lessee to the Panchayat under the lease is erroneous and liable to be quashed. *Gopal Gounder* v *Panchayat Board, Manalurpet*[2], holds that if there is a dispute as to whether a member of a Panchayat Board has become disqualified or not the only procedure to be followed for removing him is to apply to the prescribed judicial authority under section 28 of the Madras Panchayats Act, 1958, and the passing of a resolution by the Panchayat Board removing a member on a memo sent by the Panchayat Extension Officer is illegal and will be quashed by *certiorari* *Chinnayya Kurumba Gounder* v. *State of Madras*[3], decides that an order of the District Collector summarily rejecting a request for *ponal kadu* cultivation under section 3 (1) (*a*) of the Madras Preservation of Private Forests Act, 1949, without giving any reasons for his order cannot be upheld as the total deprivation of the customary right to such cultivation must be viewed as one which cannot be permitted under the said Act, and the Collector's order is liable to be quashed. *Vera Gounder* v. *Ramaswamy Gounder*[4], states that where there is an error of law apparent on the face of the record in an order of the Election Court the jurisdiction of the High Court under Article 227 could be invoked to correct such error In *Bhagat Raja* v. *Union of India*[5], the Supreme Court points out that when the authority whose decision is to be reviewed gives reasons for its conclusions and the reviewing authority affirms the decision for the reasons given by the lower authority one can assume that the reviewing authority found the reasons given by the lower authority as acceptable to it, but when the lower authority itself fails to give any reason other than that the successful applicant under Rule 26 of the Mineral Concession Rules, 1960, was an old lessee and the reviewing authority does not even refer to that ground the order of the reviewing authority must be held to be unsatisfactory. *Guruswami Nadar* v. *Ezhumalai Panchayat Board*[6], lays down that in respect of goods taken out of the limits of a Panchayat Board even the State Legislature has no power to levy a tax; that it is therefore not possible for the State Legislature either to permit the levy of such a tax by the Panchayat Board or to validate such levy by the Board, that a mere custom unrelated to anything else by which the village community makes collection in respect of goods brought for sale within its limits or goods taken out of its limits for sale outside is not valid, and that there is no constitutional or legal basis for such levy In *State of Madras* v *Habibur Rehman and Sons* [7] the Supreme Court makes it clear that the operative provisions of the several parts of Article 286, namely clause (1) (*a*) clause (1) (*b*), clause (2) and clause (3) are intended to deal with different topics and one cannot be projected or read into another, that, in other words, the legislative authority of the States to impose taxes on sales and purchases was restricted by four limitations in respect of sales or purchases outside the State, in respect of sales or purchases which take place in the course of inter-state trade or commerce, in respect of sales or purchases in the course of imports into or exports out of India and in respect of sales and purchases of goods declared by Parliament to be essential for the life of the community, that though these limitations may overlap to some extent the legislative power of the State to tax sale or purchase transactions may be exercised only if it is not hit by any of the limitations; that the restrictions imposed by the Article are cumulative, that the Sales Tax Validation Act, 1956, merely lifted the ban under Article 286 (2) on the State's power to legislate but the ban imposed by Article 286 (1) (*a*) was still effective and could not be removed by legislation of Parliament, *i e*, even if the ban under Article 286 (2) is removed by the Validation Act, no State can tax an inter-State sale or purchase taking place outside its territorial limit, that what is an 'outside sale' is defined as *Explanation* to Article 286 (1) which states what should be deemed an 'inside sale', that by Article 286 (1) as it stood before the Constitution Sixth Amendment sales as a direct result of which goods were delivered

1. (1968) 1 M L J 383
2. (1968) 2 M L J 81.
3. (1968) 2 M L J. 383.
4. (1968) 1 M.L.J. 146.
5. (1968) 1 M L J. (S C) 77
6. (1968) 1 M L J. 417
7. (1968) 1 M.L.J (S C) 148.

in a State for consumption in such State, *i e*, the sales falling within the *Explanation* to Article 286 (1) were fictionally to be regarded as inside the State in which such delivery took place and being outside all other States were exempt from sales tax by those other States, that the Validation Act lifted the ban under Article 286 (2) alone but did not remove the ban under Article 286 (1) which continued to apply without being affected by the Validation Act, and that even if a sale fell within the *Explanation* under section 2 (*h*) of the Madras General Sales Tax Act, 1939, it was beyond the competence of the Madras State to tax if the assessee had delivered the goods outside the State for consumption therein *State of Madras* v *Rohtas Industries Ltd* [1] points out that in order to satisfy the requirements of Article 299 it is not necessary that there should be drawn up a formal agreement as such and that if the requirements of the Article could be found satisfied in the correspondence relating to the contract that would suffice to satisfy Article 299 In *Andhra Sugars Ltd* v. *State of Andhra Pradesh*[2], the Supreme Court holds that a non-discriminatory tax on goods does not offend Article 301 unless it directly impedes the free movement or transport of goods; that normally a tax on sale of goods does not directly impede the free movement or transport of goods; and that section 21 of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961, does not impede the free movement or transport of goods and is not violative of Article 301. *Krishnaswami* v *Director of Technical Education*[3], makes it clear that where a person is regularly appointed to a particular post he cannot by a subsequent order of Government be asked to take charge of another post even if both posts carry the same status, scales of pay and responsibilities, when there are chances of promotion in the former post while there are no such chances in the latter, that a civil servant is entitled to the protection under Article 311 and such protection cannot be whittled down or negatived by the Service Rules, that if administrative acts appear to be arbitrary and capricious Courts have a right to interfere in writ jurisdiction to help the persons who are meekly suffering; that though the Court should not and cannot dictate how the discretion is to be exercised it can compel the legitimate exercise of such discretion, that the Public Service Commission cannot and should not identify itself with the Governmental authorities, that if the Commission is to change its opinion from time to time to suit the occasion it would be placing itself in a ridiculous situation and would be liable to public criticism, and that its approval should be the last word in the selection of a particular candidate for a distinct post In *Tarak Nath Ghosh* v *State of Bihar*[4], the Supreme Court expresses the view that under Article 314 the right that continued to enure for the benefit of a person already in service included in the Indian Police Service under the Recruitment Rules of 1954 is that any enquiry to be held into his conduct must comply with the requirements of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930, that an enquiry ordered under the All India Services (Discipline and Appeal) Rules, 1955, is in no way detrimental to the interest of the person against whom the enquiry is held as compared with an enquiry under Rule 55 of the 1930 Rules, and that under both sets of Rules the enquiry could be ordered by the authority under whom the person concerned happened to be serving In *Sanveevayya* v *Election Tribunal*[5], the Supreme Court points out that when an election petition has been referred to a Tribunal by the Election Commission and the former is seized of the matter the petition has to be disposed of according to law, that the returned candidate cannot get rid of an election petition filed against him by resigning his seat in the Legislature whatever the reason for his resignation may be and that the petitioner in the Election Petition might pray for a declaration that himself or another has been elected; and that has to be decided before the seat becomes vacant. In *Commissioner for Commercial Taxes* v *Shrikishan Jhaver*[6], the Supreme Court lays down that the entries in the various Lists in Schedule VII to the Constitution must be given the widest possible interpretation, and that while making law under any entry in the Schedule it is competent to the Legislature to make all such incidental and ancillary provisions as

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1 (1968) 2 M L J 359
2 (1968) 1 M L J (S C) 117
3. (1968) 1 M L J. 348.
4. (1968) 2 M L J (S C) 103
5 (1968) 1 M L J (S C) 112
6. (1968) 1 M.L.J. (S.C) 43.

may be necessary to effectuate the law and to check the evasion of the law. *Zenith Lamps and Electricals Ltd* v *The Registrar*[1], states that Entry 3 of List II of the VII Schedule authorises laws with respect to " fees taken in all Courts except the Supreme Court "; that the expression is " fees " and not " taxes " and the Constitution under its several provisions makes a distinction between fees and taxes; that the essential element of a fee is that it is a levy in consideration of services performed by the State for the benefit of the individual who is called upon to make the payment, and it cannot be an exaction that cannot be correlated reasonably to the services; that though there is some element of taxation even in a fee the essential distinction is there and the question will always be to look for the pith and substance whether the taxing element predominates, that if the element of revenue for the general purposes of the State predominates the taxing element takes hold of the levy and ceases to have any relation to the cost of the administration to which it relates and becomes a tax; that the expression " fee " in Entry 3 of List II means an impost for services sought or rendered; that the mere fact that the fees taken in Courts are made a separate head of legislation, namely, Entry 3 of List II cannot alter the innate character of the levy as a fee, nor the mere fact that it goes into the Consolidated Fund; that the levy under the Madras Court-fees and Suits Valuation Act, 1955, or its incidence on suits with large claims cannot but be manifestly unreasonable and as the value of the claim goes up the levy becomes more and more unrelated to the object of the levy, and that the levy of Court-fees in the Original Jurisdiction of the High Court under Rule 1 of the Madras High Court-fees Rules, 1956, as statutorily provided for under Article I, Schedule I of the Madras Court-fees and Suits Valuation Act, 1955, is invalid and unconstitutional In *Deputy Commercial Tax Officer* v. *Enfield India Co-operative Canteen Ltd.*[2] the Supreme Court declares that the expression 'sale of goods ' used in the legislative entries in the Constitution and the Government of India Act, 1935, bears the same meaning which it has in the Sale of Goods Act, 1930, and therefore the State Legislature may under Entry 54, List II, legislate in respect of the series of acts beginning with an agreement of sale between parties competent to contract and resulting in transfer of property from one of the parties to the agreement to the other for a price, and matters incidental thereto, but cannot make a transaction which is not a sale within the Sale of Goods Act a sale by a statutory fiction and impose a tax thereon, and that if the element of transfer of property is lacking in any transaction there is no sale and the Legislature cannot by treating it as a sale by a deeming clause bring it within the ambit of the taxing statute.

Industrial Law

In *Andhra Prabha Ltd* v *Madras Union of Journalists*[3], the Supreme Court points out that in Industrial Law, a new company which is an independent legal entity cannot be called a benamidar for another older organisation because there was in both companies a person or family of persons who could guide the destinies of the two companies, and that where the ownership or management of an undertaking is transferred whether by agreement or by operation of law from the employer to a new employer every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation under section 25-F of the Industrial Disputes Act as if he was retrenched, but the principles will not apply to a workman if his service is not interrupted and the terms and conditions of service after the transfer are not in any way less favourable than before. In *Management, Chitavalasah Jute Mills Co Ltd* v. *Workmen*[4], the Supreme Court makes it clear that it is no more in controversy that in determining the conditions of service of the industrial workers in any unit it is necessary to bear in mind the conditions prevailing in similar units in that region and generally the basis of such a determination is industry *cum* region; that it is well-settled that in drawing up enduring schemes like gratuity schemes temporary losses or gains should not be taken into consideration; that what is of the essence is the profit making capacity of the concern; and that in determining the question one

1. (1968) 1 M L J. 37
2. (1968) 1 M L.J. (S.C.) 68.
3. (1968) 1 M L J (S C.) 100.
4. (1968) 2 M.L.J (S.C) 100.

has to take into consideration the paid-up capital of the company, its reserves, its earning in the past and its future prospects. *Workers Union* v *Management of United Bleachers*[1], holds that the normal relief in the case of wrongful dismissal or retrenchment is one of reinstatement; that reinstatement cannot be denied merely on the ground that the employer had engaged alternative hands or that there had been protracted litigation or delay in the matter or that the relationship between the management and the workman is strained; and that it is only in exceptional cases in which it is not in the interests of the industry to order reinstatement that reinstatement can be refused *Peer Mohamed & Co* v. *Mohamed Hussain*[2], lays down that where an order of termination from service is set aside by a Tribunal it is the duty of the employee concerned either to demand or insist upon the employer that he should be reinstated in his former job; that he should either claim or inform his employer in writing that he is ready and willing to join the service within a reasonable time or give a notice that he should be reinstated failing which, he would be taking legal proceedings against the employer, that in the absence of these the employer is under no legal obligation to take steps to reinstate the concerned employee; and that the employee cannot keep quiet for months and months without expressing any desire on his part to take up the employment in pursuance of the order of reinstatement passed by the Tribunal *Penkatachalam* v. *Management of Ashok Leyland Ltd* [3], decides that where in the sphere of chassis delivery work of a passenger and lorry chassis manufacturer the work was confined only to about ten to twelve days in a month and was not perennial in nature and the delivery of the chassis could not be said to be incidental to the manufacturing process and it would not also be feasible to engage some convoy leaders on a permanent basis or absorb some of them permanently as the convoy will have to be moved without any delay, the introduction of the contract labour system cannot be assailed. *Fraser and Ross* v. *Sambasiva Iyer*[4], expresses the view that Chartered Accountants constitute a learned profession and a firm of Chartered Accountants cannot be termed an 'industry' within the definition in section 2 (*j*) of the Industrial Disputes Act In *Gymkhana Club Employees Union* v. *Management*[5], the Supreme Court points out that a members' club like the Madras Gymkhana Club is not an 'industry' within the definition in section 2 (*j*) inasmuch as it does not follow a trade or business, nor is it an undertaking, and that none of the considerations—(*a*) that the Club is organised on a vast scale with multifarious activities, (*b*) that facilities of accommodation, catering, sale of alcoholic and non-alcoholic beverages, *games* etc., are provided, (*c*) that the Club runs parties at which guests are freely entertained; and that (*d*) the Club has established reciprocal arrangements with other clubs for its members—is sufficient to establish that the Club is an 'industry' within the meaning of the Industrial Disputes Act *Sivasubramanyam* v. *State of Madras*[6], holds that the test of conversion of an individual dispute into an industrial dispute is that it should affect the workers as a class, that it should be sponsored by a considerable number of workers in the establishment, that there should be community of interest between the workers or the union representing them and the employee whose dispute is sponsored by them, and that a majority or a large section of workmen employed in the particular industry should back the claim in dispute sponsored by a union of employees of different establishments, and further such workmen should feel themselves concerned in the dispute, and that a dispute concerning the conduct of an individual workman cannot be a matter which would affect the workers as a class like bonus, conditions of service *etc. Chinnappan* v. *Management of Kaleeswarar Mills*[7], makes it clear that the right of the management to close the business subject to the payment of compensation to the workers cannot be questioned, that a person cannot be compelled to carry on a business, and the management has got a right to close down an undertaking permanently or even temporarily for an indefinite period, that the words "for any other reason" in section 2 (*kkk*) have to be construed *ejusdem generis* with the reasons mentioned speci-

1 (1968) 1 M L J. 99
2. (1968) 1 M L J 370
3. (1968) 2 M L J. 186.
4. (1968) 1 M L J 361.
5. (1968) 2 M.L J (S C) 6
6. (1968) 1 M L J. 214
7. (1968) 1 M.L.J. 23.

fically in the section, that while " lay-off" is the failure, refusal, or inability of an employer due to reasons beyond his control to give employment to a workman whose name is on the muster rolls, "closure" is the closing of the business permanently or for a temporary period; that while in closure the employer does not merely close down the place of business but the business itself indicating a final and irrevocable termination of the business itself, " lock-out" is the closure of the place of business and not the closure of the business itself for the purpose of compelling the employees to accept the proposals of the employer, and that the question whether a particular case would be closure or lay-off would depend on the facts of the case *Secretary, Madras General Workers Union* v *Management of B T H Factory*[1], decides that though the workers were paid on piece work basis there was regularity of attendance, that though they had freedom to weave as many pieces as they liked the piece of cloth they wove was restricted to two qualities, that fixed hours of work were allotted to them, that when they came late beyond a certain hour they were not given any work, that there was weekly holiday, maintenance of muster roll, and a record of workers being removed from service from time to time, and that even though there was no direct evidence that when the weavers were engaged at the looms someone on behalf of the management was constantly supervising the work it was implicit from the regularity of attendance and from the fact that the weavers were weaving pieces on the warps supplied by the management and that they were paid according to the quality of the cloth woven, that the management would have control in seeing that the warp supplied by them was not wasted or spoiled but was put to proper use so that goods saleable in the market and of standard quality were woven out of the warp. showed that the employees were " workmen " as defined in section 2 (*s*) of the Industrial Disputes Act. *Madura Sugars Staff Union* v. *State of Madras*[2], states that in making a decision about a reference under section 10 the Government need not confine itself to the Conciliation Officer's report and can go into other facts which came to its notice and are relevant for the purpose; that the Government can go into the facts and find out whether a *prima facie* case for reference has been made out on the merits, that the Government should exercise its discretion *bona fide* in the matter of deciding whether to make a reference or not, that when the Government declines to make a reference it is obliged to state its reasons, but it need not record all the reasons in the sense that they should be exhaustive, that the reasons given should be relevant and should not be extraneous to the subject-matter, and that if the Government makes a reference, the Court cannot in a writ petition go into the question whether it acted properly in making the reference *Madras Bolts and Nuts Ltd.* v. *Presiding Officer, Labour Court*[3], points out that an objection to the effect that a reference under section 10 is invalid because the reference was not made on the representation of a union having a representative character to represent the workers will have very little substance after the matter has come before the Labour Court and there is no dispute at all that the issue raised for decision affected not an individual worker but a large number of workmen, that when a dispute affects a number of workmen there is no question of its being considered a collective dispute by reason of the fact that there has been a sponsoring of the dispute by a representative body; and that in such circumstances there can be no valid objection to the reference on the ground that it was not made at the instance of a representative body *Workmen of Dalmia Cement Ltd.* v *State of Madras*[4], expresses the view that section 10 (1) of the Industrial Disputes Act confers unlimited powers on the Government to make a reference when it is of the opinion that an industrial dispute exists or is apprehended and this power can be exercised at any time; and that the fact that the Government had earlier refused to make a reference under section 12 (5) after considering the conciliation report will not bar the Government's right to make a valid reference later under section 10 (1) *Venkatachalam* v. *Management of Ashok Leyland Ltd*[5], holds that under section 10 (4) of the Industrial Disputes Act it is the duty of the Tribunal to confine its adjudication to the points referred to it for adjudi-

1. (1968) 1 M.L.J. 169.
2. (1968) 1 M.L.J. 456.
3. (1968) 2 M.L.J. 179.
4. (1968) 2 M.L.J. 479.
5. (1968) 2 M.L.J. 187.

cation and matters incidental thereto *Management of Vaikundam Estate* v *Ramaswami*[1] explains that an arbitrator under section 10-A of the Industrial Disputes Act is no, in the same position as an arbitrator in commercial disputes or civil disputes, that the last type of arbitrator has to be bound strictly by the terms of the law as applied to the rights of parties and in a sense takes the place of a Court of law for deciding a dispute between parties, but in industrial arbitration, the arbitrator's powers are much wider; and that his enquiries can be spread out on a larger field, so that he can decide for himself the best way to find out a solution for bringing to an end the dispute referred to him *Messrs. Andhra Laundry* v *Presiding Officer, Labour Court*[2], points out that in the case of retrenchment the parties cannot waive under the Industrial Disputes Act the payment of compensation or notice, whereas, it looks as if the parties can in the case of closure compensation contract themselves out of the statute, and consequently, where on the closure of an undertaking the workmen thereof were paid a certain amount as closure compensation and the workmen received the amount and passed receipts in full and final settlement of their claims, with full knowledge of their rights, they cannot later on contend that what was received by them was much less than what the statute provided and that therefore they should be paid the full statutory benefits conferred on them by the Act; and that the passing of receipts by the erstwhile employees in full and final settlement of their claims would amount in law to an act of waiver or estoppel. *Messrs. Presidency Talkies* v *Presiding Officer, Labour Court*[3], makes it clear that the employer, when he takes action under section 33 (2) of the Industrial Disputes Act by dismissing or discharging an employee, should immediately pay him or offer to pay wages for one month and also make an application to the Tribunal for approval at the same time, that the management would have fulfilled its obligation by making the offer; and that the management need not secure as indeed it cannot secure, the acceptance of the offer by the employee before filing the application *Management of Presidency Talkies* v. *Natarajan*[4], states that a Labour Court in granting permission under section 33 (2) (*b*) does not act as a Court of Appeal in cases of disciplinary proceedings initiated by the management before a domestic tribunal, and that the Labour Court does not interfere in such cases and substitute its own judgment for that of the management, but if there is any basic error in the procedure or findings of such domestic tribunal and if the finding is completely baseless or perverse the Court will be justified in refusing to grant the statutory permission sought for. In *Syndicate Bank Ltd* v *Ramanath Bhat*[5], the Supreme Court points out that section 33 indicates the point of time when the order of dismissal or discharge is passed by the authority concerned, that an order of discharge or dismissal can be passed only once, that the appellate authority considers only whether the order has to be sustained or whether it has to be modified and there is no question of the authority passing again an order of dismissal; and that the proviso to section 33 (2) (*b*) when it refers to payment of wages for one month also indicates that it relates to an order of discharge or dismissal which comes into effect immediately. In *P. D. Sharma* v *State of Bank of India*[6], the Supreme Court observes that on a comparison of sub-sections (2) and (3) of section 33 it would be seen that the scope of the two provisions are wholly different, that this is clear from the history of section 33 since its incorporation into the Act of 1947; that by enacting section 33, Parliament wanted to ensure a fair and satisfactory enquiry of an industrial dispute undisturbed by any action on the part of the employer which could create fresh cause for disharmony between him and his employee; that the object of section 33 is that during the pendency of an industrial dispute the *status quo* should be maintained and no further element of discord should be introduced, that a distinction was, however, made between matters connected with the industrial dispute and matters unconnected with it, that while construing the scope of sub-section (3) of section 33 it is to be borne in mind that under the common law the employer has a right to punish the employee for misconduct; that once the

1. (1968) 1 M L J. 202.
2. (1968) 2 M.L.J. 232.
3. (1968) 2 M.L J. 318.
4. (1968) 2 M L.J. 221.
5. (1968) 2 M.L J (S.C) 23.
6. (1968) 2 M.L.J. (S.C) 134.

industrial dispute was decided the ban placed on the common law, statutory or contractual rights of the employer stood removed and it was free to exercise those rights, that thereafter there was no need to take anybody's permission to exercise its rights, that, in other words, the limitation placed on the employer's rights by section 33 (3) disappeared the moment the industrial dispute was decided, and that therefore, the tribunal had no competence to consider the application made by the employer after the industrial dispute was decided.

Contracts and Specific Relief.

In *Loganathan* v. *Ponnuswami Naicker*[1], it is held that agreements to stifle prosecutions are forbidden on the principle that no man shall trade on felony, that if the accused person is innocent, the law is abused for the purpose of extortion and if he is guilty in fact, the law is eluded by a corrupt compromise screening the criminal for a consideration, and that the test is whether the dropping of the criminal prosecution formed a part of the bargain for the agreement to pay *Manicka Gounder* v. *Muniammal*[2], expresses the view that, where the consideration relates strictly to past cohabitation which is illicit in the sense that it is outside matrimony but which otherwise does not constitute any offence, it could be conceivably held that the promise to pay is supported by good consideration, but even so, though the consideration may not be forbidden by law nevertheless it falls under the interdict that it may be immoral or opposed to public policy, that the Courts must by every means in their power promote matrimony and the incurring of lawful sexual relationship alone, and Courts ought not to give sanction or approval even in an implied form to irregular sexual relationships outside the bond of matrimony even where they constitute no infringement of the penal law, that if the promise be interpreted as an undertaking to pay for past services voluntarily rendered, then presumably the consideration would be good, but if it is to be fixed or determined with regard to the fact of past cohabitation alone then it would be doubtful whether the Court would be justified in declining to apply the last category of section 23 of the Contract Act to the contract, and that, in any event, there can be no doubt whatever, that where the illicit connection was adulterous, it cannot sustain the promise to pay or constitute a valid consideration *State of Madras* v *Govindaraja Chettiar*[3], states that where the State Government acting through its officers agreed to purchase certain pieces of machinery from the respondent but there was no contrct in writing as required by Article 299 of the Constitution, even if there is any invalidity attaching to the contract, the fact that the Department took the property covered by such invalid contract and used it for a considerable length of time would justify the plaintiff's claim In *Ambalavana Chettiar* v *Express Newspapers Ltd* [4], the Supreme Court points out that where no time is fixed under the contract of sale for acceptance of the goods, the measure of damages in *prima facie* the difference between the contract price and the market price on the date of refusal by the buyer to accept the goods *Bhagavathi Mudaliar* v. *Subramaniam*[5], states that where an amount is deposited by a vendee with the vendor at the time when they entered into a contract to convey certain properties the question whether the amount paid represents an advance *simpliciter* or has any tinge of the character of a deposit for due performance of the contract or earnest money could be spelt out from the circumstances of the case and the evidence available, and the mere nomenclature or the absence of any forfeiture clause in the agreement may not be decisive, and that where there is total lack of evidence, to conclude that the amount is really earnest money or deposit for the due performance of the contract would not be justified *State of Madras* v. *Rohtas Industries Ltd* [6], decides that even a savings bank pass book may be pledged for the due performance of a promise, and where a certain sum in the shape of a savings bank pass book is pledged with the promisee as security for the faithful performance of a contract by the promisor there can be no forfeiture of the amount on a breach of contract by the promisor in the absence of a specific clause to that

1. (1968) 1 M L J. 422.
2. (1968) 2 M L J. 153.
3. (1968) 2 M.L J. 596.
4. (1968) 2 M L J (S C) 31
5. (1968) 2 M L J 490.
6. (1968) 2 M.L.J. 359.

effect, and the amount in such a case would be available only to satisfy the damages that may be suffered by the promisee on account of default in the faithful performance of the contract by the promisor *Mutharasu Thevar* v *Mayandi Thevar*[1], holds that where an agent had been appointed only to expend for the litigation to be and already sponsored by him and to have the right in the future to mortgage or sell the property of the principal for reimbursement of expenses incurred by him, the use of the word "*uruthi*" in the power of attorney would signify "assurance" and not 'security' and hence, there is no irrevocable agency vested in the agent entitling him to object to the revocation of the vakalat given by him asked for by the principal In *Deputy Commercial Tax Officer* v. *Enfield India Ltd*, *Co-operative Canteen Ltd* [2], the Supreme Court makes it clear that a registered society is a body corporate with power to hold property and is capable of entering into contracts, and from the mere fact that the society supplies refreshments to its members only and claims to make no profit it cannot be inferred that in preparing refreshments and making them available to its members it is acting as the agent of the members. In *State of Maharashtra* v. *Dr M N Kaul*[3], the Supreme Court lays down that in regard to a guarantee, in case of ambiguity, when all other rules of construction fail the Courts interpret it *contra proferentum* or use the recitals to control the meaning of the operative part where that is possible, but, whatever the mode employed, the cardinal rule is that the guarantor must not be made liable beyond the terms of his engagement. *Messrs. Tirumala Venkateswara Timber and Bamboo Firm* v. *Commercial Tax Officer, Rajahmundry*[4], points out that while the essence of a contract of sale is the transfer of title to the goods for a price paid or promised to be paid and the transferee in such a case is liable to the transferor as a debtor for the price to be paid, the essence of agency to sell is the delivery of the goods to a person who is to sell them not as his own property but as the property of the principal who continues to be the owner of the goods and will therefore be liable to account for the sale proceeds; that the true relationship has to be gathered from the nature of the contract, its terms and conditions; and that the terminology used by the parties is not decisive of the legal relationship *General Electric Co* v *Government of Madras*[5], explains that the incident of the passing of title in the goods not as a result of a contract express or implied to that effect does not amount to a sale; that a narrow and pedantic interpretation of a contract has to be avoided, and that if there are overwhelming indications in the contract itself that it is a composite and indivisible one and what has been agreed to between the parties was not to supply materials in the course of the contract but as and when such materials are imbedded in the contractual work involved they become the property of the other party, then there wold be no question of the sale of such materials by the contractor to the other party, and that in a works contract it has to be examined to find out whether the pith and substance of the contract is only execution of the work agreed to between the parties without there being any element of sale of goods or materials. In *Andhra Sugars Ltd* v. *State of Andhra Pradesh*[6], the Supreme Court lays down that there can be a contract under compulsion of a statute, that under the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act XLV of 1961 a cane-grower makes an offer to the occupier of the factory directly and the latter accepts the offer, whereupon the parties make and sign an agreement in writing resulting in direct privity between the parties; and hence there is a contract of sale and purchase of cane though the buyer is obliged to give consent under the compulsion of the statute. *Veeramalai Vanniar* v. *Thadikara Vanniar*[7], recalls attention to the principle that no person can convey a better title than he has except where the statute provides exceptions to the rule like section 27 (*b*) of the Specific Relief Act, 1877, and according to that provision the subsequent transferee can retain the benefit of his transfer by purchase, which *prima facie* he had no right to get, only after satisfying the two conditions specified concurrently (1) he must have paid the *full value* for which he purchased the property, and (2) he must have paid it in good faith.

1. (1968) 2 M L J 74.
2. (1968) 2 M L J (S C) 68.
3. (1968) 1 M L J (S C) 74.
4. (1968) 2 M.L.J. (S.C.) 64.
5. (1968) 1 M L J 429
6. (1968) 1 M L J (S C) 117.
7. (1968) 1 M.L.J 437

and without notice of the prior contract, and that the burden of proof is upon the subsequent purchaser to establish these conditions in order that his rights may prevail over the prior agreement of sale.

PROPERTY LAW.

In *Perumal Naicker* v. *Ramaswami Kone*[1], it is pointed out that the question whether when a chattel is attached to the earth or a building it is immovable property is a mixed question of law and fact to be decided in the light of the particular facts in each case ; that for a chattel to become part of immovable property and to be regarded as such property it must become attached to the immovable property as permanently as a building or as a tree is attached to the earth ; and that, if in the nature of things, the property is a movable property and for its beneficial use and enjoyment it is necessary to imbed it or fix it on earth, though permanently, that is when it is in use, it should not be regarded as immovable property for that reason. *Rajagopala Pillai* v. *Pakkiam Ammal*[2], decides that a release of one's right to a claim on the basis of a blending in future is void and inoperative as it amounts to a release of a *spes successionis* or the right to a chance of a legacy coming within the mischief of section 6 (*a*) of the Transfer of Property Act In *D Nagaratnamba* v *K. Ramayya*[3], the Supreme Court makes it clear that where past cohabitation was the motive and not the consideration for a transfer, the transfer amounts to a gift and it is not hit by section 6 (*h*) of the Transfer of Property Act , but if the property gifted was Hindu coparcenary property the gift will fail, as a coparcener has no power to make a gift of his undivided interest in coparcenary properties to his concubine. *Yasodammal* v *Janaki Ammal*[4], holds that when once it is found that a material portion, particularly the time for payment of the price, in an agreement of sale reduced to writing, has been orally varied or modified, it is clear that there is no written agreement of sale containing all the terms of the agreement satisfying the requirements of section 53-A and to such a sale the section cannot apply. *Anantha Pillai* v *Ratnasabapathy Mudaliar*[5], observes that in view of the provisions contained in section 54 to hold that a person who has been put in possession of a property pursuant to an agreement to sell, in whose favour no conveyance has been executed, can establish his title on the basis of that agreement to sell itself, is to fly in the face of the provisions contained in section 54 and is to render the same clearly nugatory, and hence such person cannot pray for a declaration of his title based upon section 53-A. *Ramachandra Naidu* v *Hassina Bi*[6], states that it is a settled proposition that if a mortgage deed contains a pesonal covenant to pay there is a right of sale, and hence in the case of a usufructuary mortgage where the mortgagor also binds himself personally to pay the mortgage money, though it is an anomalous mortgage the mortgagee will be entitled to a decree for sale. *Chief Controlling Revenue Authority* v. *Messrs. Pioneer Spinners Ltd*[7], points out the a mortgage by deposit of title deeds does not require any writing in law , that besides the deed containing the terms as to the loan etc , and the deposit what is required is an intention that the deed shall be security for the debt , and that the existence of such intention is a matter for inference from the facts *Govindasami Pillai* v. *Srinivasa Chettiar*[8], states that where the lands were agricultural lands and the leases were agricultural leases the provisions of the Transfer of Property Act as such will not apply In *Calcutta Credit Corporation Ltd.* v. *Happy Homes Ltd.*[9], the Supreme Court makes it clear that a tenancy being founded on contract it is always open to the parties thereto to agree that the tenancy shall be determined otherwise than by notice served in the manner provided by section 106 or by a notice of a duration shorter than the period provided by the Transfer of Property Act ; that section 113 contemplates waiver of the notice by any act on the part of the person giving it, if such an act shows the intention to treat the lease as subsisting and the other party gives his consent , that once a notice is

1. (1968) 2 M L J. 493.
2. (1968) 2 M L J. 411
3. (1968) 1 M L.J. (S C.) 110.
4. (1968) 1 M L J. 249.
5. (1968) 2 M.L.J 574.
6. (1968) 1 M.L.J. 139.
7. (1968) 1 M.L J. 96.
8. (1968) 2 M.L J. 367.
9. (1968) 2 M.L J. (S.C.) 42.

served determining the tenancy or showing an intention to quit on the expiry of the period of the notice the tenancy is at an end, unless with the consent of the other party to whom the notice is given the tenancy is agreed to be treated as subsisting ; and that in order to determine a tenancy under the Transfer of Property Act at the instance of a tenant it is not necessary that there must be actual delivery of possession before the tenancy is effectively determined.

LAND TENURES AND TENANCY LEGISLATION.

In *Perumal Chettiar* v. *Estates Abolition Tribunal*[1], it is held that merely because a devasthanam is described as ekabogam mirasdar in some of the muchilikas executed by the ryots it cannot be said that it possesses the kudivaram interest also, that a mere recital in a document that a person was ekabogam mirasdar would not necessarily show that he had the entire kudivaram interest in the village at the time of the shrotriem grant ; that the tenants under the mirasi tenure enjoy the right of cultivating the soil by prescription, and their ancestors having done so far generations they cannot be evicted from the lands at the will of the mirasdar; that as the tenants continued to occupy the lands uninterruptedly they became the legal proprietors, and according to the practice of the country, they became the owners by length of occupancy and retained possession of the lands and enjoyed the produce ; that obtaining patta in the sole name of the devasthanam would not be itself determine the character of the tenure, and that in view of the complexity of the mirasi rights, in view of the doubtful rights of the mirasdar and the tenants, in view of the liberalised legislation conferring benefits on the occupants of the soil, and in view of the continuous and uninterrupted possession by the tenants of the land the mirasi tenure has to be interpreted according to the present day needs of the society In *Chidambaram Chettiar* v. *Santhanaramaswami Odayar* [2], the Supreme Court makes it clear that the use of the word *iruvaram* in a document is not decisive of the question whether the land is private land or not that under section 3 (10), Estates Land Act, private land comprises two categories, namely, private lands technically so called and lands deemed to be private lands ; that the former must be the domain or homefarm land of the landholder as understood in law ; that the mere fact that particular lands are described in popular parlance as pannai, khas, kambattam or sir is not decisive of the question unless they partake of the characteristics of domain or homefarm land , that the correct test to ascertain whether a land is domain or homefarm is whether it is land which a zamindar has cultivated himself and intends to retain as resumable for cultivation by himself even if from time to time he demises it for a season ; that the sub-clause (*b*) (i) of the definition is intended to cover those lands which come obviously within what would be recognised as the domain or homefarm lands, *i e*, lands appurtenant to the landholder's residence and kept for his enjoyment and use ; that the other clauses in the definition deal with lands which would not necessarily be regarded as homefarm lands in the ordinary usage of the term ; that the definition read as a whole indicates clearly that the ordinary test for private land is the test of retention by the landholder of he lands for his personal use and cultivation by him and under his personal supervision ; that such lands may be let on short leases for the convenience of the landholder without losing their distinctive character ; but it is not the intention or the scheme of the Act to treat as private those lands with reference to which the only peculiarity is the fact that the landlord owns both the varams in the lands and has been letting them out on short term leases. *Md. Mustafa Marakayar* v. *Udayanachi Ammal*[3], states that the provisions of the Madras Estates (Abolition and Conversion into Ryotwari) Act relating to grant of ryotwari patta show that once the character of the land is determined patta should perforce issue, and the person in possession of lands for which he is entitled to a ryotwari patta will get patta not as a matter of grace but as of right ; that, in effect, both possession and title of a person entitled to a ryotwari patta are saved from the effect of the notification under section 3 (*b*) of the Act and the ownership in such lands

1. (1968) 2 M.L.J. 157.
2. (1968) 2 M.L.J. (S.C.) 83.
3. (1968) 2 M.L.J. 58.

continues in the quondam landholder notwithstanding the notification and the fact that it is subject to determination of the character of the land for which he will be entitled to a ryotwari patta ; and that the only change brought about is not to the ownership but to the tenure of the land for which ryotwari patta is granted, in that before the notification such land was subject to payment of peshkush, whereas, after the notification, its character as private or ryoti land is destroyed and it will be held after the determination of its character and grant of ryotwari patta as ryotwari land subject to payment of assessment as finally settled under section 22. *Subbaraju* v. *Balanarasimhaiya*[1], holds that where an application under section 15 read with sections 13 and 14 for the grant of a ryotwari patta to the private lands of a landholder is made it cannot be rejected merely on the ground that the lands in question were leased out to ryots ever since their purchase and there was no evidence of personal cultivation by the landholder or his predecessors-in-title at any time, that personal cultivation by the landholder is only one of the modes of proof in such cases ; and that even without such evidence of personal cultivation, if the landholder makes out the ingredients required under section 12 (*a*) of the Act read with section 3 (10) (*b*) of the Estates Land Act, it would be sufficient to discharge the onus of proof. *Perumal Chettiar* v. *Estates Abolition Tribunal*[2], points out that, even in an inam estate, a landholder can own private lands, and hence, the fact, that a village has been declared an inam estate under the Estates Abolition Act and that the declaration has become final, will not preclude the landholder from applying for a ryotwari patta under section 15 asserting that the lands are his private lands. *Ramaswamy Chettiar* v *Assistant Engineer, Highways*[3], states that under section 18 (6) if any question arises whether any building or land falls or does not fall within the scope of sub-sections (1), (2), (3), (4) or (5) it shall be referred to Government whose decision shall be final and not liable to be questioned in a Court of law ; that, under the subsequent rules, the power to decide the question has been delegated by the Government to the Board of Revenue; and hence if it is established that a disputed land is an essential part of the applicant's building constituting its frontage and could never form part of the street poramboke he will be entitled under section 18 (6) to get relief by an application to the Board of Revenue. *Ammasai Goundar* v *Ravala Gounder*[4], makes it clear that the protection against eviction which a tenant has under the provisions of the Madras Cultivating Tenants Protection Act is only against the landl ord and not against any other person ; that, if in a suit for ejectment, the defendantepleads that the plaintiff is not his landlord there is no scope for the defendant contfinding that he is entitled to any protection under the Act; that before the Court can find a person to be a cultivating tenant it must necessarily find him to be a cultivating tenant as defined in the Act, and one of the essential ingredients of the definition is that the person who so claims must be carrying on personal cultivation; that before a civil Court can transfer a proceeding to a Revenue Divisional Officer under section 6-A it must be found that there conditions are fulfilled (*i*) the defendant must be a cultivating tenant, (*ii*) he must be entitled to the benefits of the Act, and (*iii*) he must on transfer of the proceeding from the Civil Court to the Revenue Divisional Officer be in a position to obtain one or the other of the statutory reliefs provided in his favour under the Act ; and that the jurisdiction of the Civil Court to transfer a suit is dependent on its finding on these three conditions and if any one of these conditions is not fulfilled the Civil Court does not lose its jurisdiction and it cannot transfer the suit to the Revenue Divisional Officer *Thangayya Vanniar* v. *Ramaswami*[5], expresses the view that as the Civil Court finds that the tenant is a cultivating tenant coming within the scope of the Cultivating Tenants Protection Act and also eligible to apply for and obtain one or more of the benefits provided in his favour by the Act the requirements of the expression " a cultivating tenant entitled to the benefits of this Act " in section 6-A would be satisfied ; that it is not a condition precedent to the exercise of the power of transfer that the Civil Court must actually conduct an enquiry and determine the very point or issue required to be

1. (1968) 1 M L J 182.
2 (1968) 2 M L.J. 157.
3. (1968) 2 M.L J. 171.
4. (1968) 2 M.L J. 90.
5. (1968) 2 M.L J. 27.

determined by the Revenue Divisional Officer ; and consequently the expression "entitled to the benefits of this Act" has reference to the eligibility of the tenant to come within the scope of the Act and claim one or more benefits and has no reference to the particular set of circumstances and facts which had been urged by the landlord as taking away the protection available to the tenant from eviction *Muthiah Nattar* v. *Ibrahim Rowther*[1], decides that if the right of a third party in possession of the concerned land is a derivative right essentially defeasible and solely depending upon the right of the landlord from whom he obtained possession and if the ground of eviction is sufficient to annul the right of the landlord it cannot be said that the third party in possession should be made a party to the proceeding by the dispossessed tenant. *Lingappa Gounder* v. *Palaniswami Gounder*[2], decides that to make local inspection under the Madras Cultivating Tenants (Payment of Fair Rent) Act and Rules (1956), rule 8, in hearing an application under the Act, the Rent Court shall have power also to depute any Officer of the Revenue Department not lower in rank than a Revenue Inspector to make local inquiry and inspection and to collect relevant data, and this in substance amounts to a power to appoint a Commissioner; but the power could be exercised only by a Rent Court and not by a Rent Tribunal. *Muthukumaraswami Pillai* v. *Srimushnam Vedapatasalai*[3], expresses the view that where a landholder filed a suit for possession of certain lands in the occupation of the defendant as his tenant under a registered lease and for ancillary reliefs such as rent or damages for use and occupation on the ground that though the lands in question were inside an inam estate as defined by the Madras Inam Estates (Conversion into Ryotwari) Act, 1963, they were his private lands and the defendant *inter alia* contended that the lands being in an erstwhile inam estate and having been notified under the Act the plaintiff could not seek possession without securing a ryotwari patta from the Tribunal constituted under that Act and that therefore the civil Court had no jurisdiction to entertain the suit, the civil Court was held to have jurisdiction in the matter and grant the reliefs payed for.

Income-tax Law.

In *Govindarajulu Chetty* v. *Commissioner of Income-tax*[4], the Supreme Court expresses the view that the principle—that if the source of the obligation imposed by the statute to pay interest arises because the claimant is kept out of his money, the interest received is chargeable to tax as income—would apply if the interest is payable under the terms of an agreeent and the Court or the arbitrator gives effects to the terms of the agreement, express or implied and awards interest which has been agreed to be paid , and that, where an owner of property is dispossessed pursuant to an order for compulsory acquisition, an agreement that the acquiring authority will pay interest on the amount of compensation is implied by virtue of the provisions of sections 28 and 34 of the Land Acquisition Act, and consequently, the interest awarded by the Court is taxable. In *Palaniappa Chettiar* v. *Commissioner of Income-tax*[5], the Supreme Court holds that where the remuneration earned by a managing director of a business was not earned as a result of the utilisation of joint family funds in the business and there was no detriment to the joint family assets or use of the joint family assets in the business, such remuneration would not contitute income of the Hindu joint family for purposes of assessment In *Jabbar* v *Commissioner of Income-Tax*[6], the Supreme Court decides that payment of a sum of money in respect of a short term lease, for removal of sand lying loose from specified areas of a river-bed, by an assessee who was carrying on the business of supplying lime and sand is revenue expenditure for the purpose of obtaining stock-in-trade and not capital expenditure ; that the decisive factor was the object with which the lease was taken and the nature of payment made when obtaining the lease ; and that the expenditure incurred by the assessee was not related to the acquisition of an asset or a right of a permanent character. In *M. M Ipoh* v. *Commissioner of Income-tax*[7], the Supreme Court points out that section 3 of the Income-tax Act, 1922

1. (1968) 1 M L J 190.
2. (1968) 2 M L J 181.
3. (1968) 2 M L J. 463.
4. (1968) 1 M.L.J. (S C.) 1.
5. (1968) 1 M L J (S C) 90.
6. (1968) 2 M L J (S C) 1
7. (1968) 1 M.L J. (S.C.) 32

in so far as it confers power upon the Income-tax Officer to select either the association of persons or the members thereof for assessment to tax in respect of the income of the association does not violate Article 14 of the Constitution; that the procedure for assessment is the same whether the income is assessed in the hands of the association or whether the share of each member of the association is assessed separately; and that no question of application of a more drastic procedure or deprivation of valuable rights of appeal and revision by the adoption of one of two alternative procedures arises In *Commissioner of Income Tax* v. *Messrs Motors & General Stores Ltd* [1], the Supreme Court makes it clear that the transaction of the transfer of buildings and machinery by an assessee in lieu of shares, where the value of the shares realised by the transaction exceeded the written down value by Rs 43,568, is not one of sale which would attract the application of section 10 (2) (*vii*) second proviso, and that in the absence of any suggestion of bad faith or fraud the true principle is that the taxing statute has to be applied in accordance with the legal rights of the parties to the transaction as embodied in the document, and the doctrine that in revenue cases the "substance of the matter" may be distinguished from the strict legal position is erroneous In *Sundaram & Co* v *Commissioner of Income-tax*[2], the Supreme Court lays down that the term "rate" is not used in section 34 (1) as meaning a fraction of the total income and, though by the use of the term a relation between the taxable income and the tax is intended, the relation need not be of the nature of a proportion or fraction; that the term is used in the sense of a standard or measure, and provided the tax is computable by the application of a prescribed standard, though it may not be directly related to taxable income, it may be called tax computed at a certain rate; that where the question of law arising out of the order of the Income-tax Tribunal was the validity of the initiation of proceedings under section 34 (1) (*b*), questions of reassessment on the ground that income had been the subject of excessive relief or income had been assessed at too low a rate would be only different aspects of the same question, and the High Court can deal with an aspect of the question of law though it was not argued before the Tribunal In *Banji Bhagwandas* v. *Commissioner of Income-tax*[3], the Supreme Court states that the expressions "finding" and "direction" in the second proviso to section 34 (3) meant respectively a finding necessary for giving relief in respect of the assessment for the year in question and a direction which the appellate or revisional authority, as the case may be, was empowered to give under the sections mentioned in the proviso, that a "finding" therefore, could only be that which was necessary for the disposal of an appeal in respect of an assessment of a particular year; that the second proviso to section 34 (3) did not save the time limit prescribed under section 34 (1) in respect of an escaped assessment of a year other than that which was the subject-matter of the appeal or revision as the case may be, that section 66 (1) only requires that the question of law which is referred to the High Court and which the High Court is to decide must be the question which was in issue before the Tribunal; that where the question itself is in issue there is no further limitation imposed by the section that the reference should be limited to those aspects of the question which had been urged before the Tribunal, and that where the question raised in the reference was whether the assessment made was saved from the bar of limitation under section 34 (3) second proviso, the applicability of the Amendment Act I of 1959 would be only one aspect of the question, and though the same was not raised by the Revenue before the Tribunal or the High Court, it could be allowed to be raised before the Supreme Court as a new contention In *Income-tax Officer, Tuticorin* v. *Devinatha Nadar*[4], the Supreme Court expresses the view that there is nothing in section 35 (5) to show that the "completed assessment" of a partner in a firm must take place after that provision was brought on the statute book; that what is to take place to give rise to the power of rectification is the finding on the assessment or reassessment of the firm *etc*, that section 35 (5) becomes operative as soon as it is found on the assessment or reassessment of the firm or on any reduction or enhancement made in the income of the firm.

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1. (1968) 1 M L J. (S C.) 26.
2. (1968) 1 M.L J. (S C) 20.
3. (1968) 1 M.L J. (S C) 53.
4. (1968) 1 M.L.J. (S.C) 135.

that the share of the partner in the profit or loss of the firm had not been included in the assessment of the partner, or if included, it was not correct; that the completion of the assessment of the partner as an individual need not happen after 1st April, 1952 and may have preceded that date, and that such completion does not control the operation of the sub-section *T. S Baliah* v *T. S. Rangachari*[1], lays down that though section 177, Indian Penal Code, and section 52 of the Income-tax Act, 1922, appear to be substantially the same the object and purpose of the two enactments being different and the offence under the former provision being wider than that under the latter it could not have been intended by the later enactment to repeal the earlier provision; that though section 297 (1) of the Income-tax Act, 1961, repealed expressly the provision in the Act of 1922, under section 297 (2) the matters referred to in clause (2) (*a*) to (*m*) have been saved notwithstanding the repeal; that the provisions of section 297 of the Act of 1961 do not take away the right of instituting prosecution under section 52 of the Act of 1922, that " proceedings for the assessment " referred to under section 297 (2) (*a*) will include prosecution also; that offences during the continuance of a statute can be prosecuted and punished even after its repeal where the repealing Act had not obliterated the offences committed when the earlier Act was in force, that the prosecution under section 52 of the 1922 Act is not taken away by the repealing Act and hence is competent, that the Inspecting Assistant Commissioner would be the person competent to institute the prosecution under section 52 and if the prosecution is launched under the old Act which was in force at the time of repeal, the entire procedure under that Act alone should be followed; and that section 292 (2) (*a*) of the Act of 1961 is not violative of Article 14 of the Constitution

HINDU LAW

In *Sawan Ram* v *Kalawanti*[2], the Supreme Court points out that adoption as envisaged in section 5 (1) of the Hindu Adoptions and Maintenance Act of 1956 is of two kinds; (*i*) adoption *by* a Hindu, and (*ii*) adoption *to* a Hindu; that the latter covers cases where an adoption is by one person while the child adopted becomes the adopted child of another person also, as in the case of adoption by a Hindu female who has been married; that by virtue of clause (*c*) of the proviso to section 12, the Act has narrowed down the rights of an adopted child as compared with the rights of a child born posthumously; that the restriction is placed on the rights of the adopted child whether adopted by a male Hindu or female Hindu, and that this restriction on the rights of the adopted child cannot lead to any inference that the child adopted by a widow will not be deemed to be the adopted child of her deceased husband. *Rajagopal Pillai* v *Pakkiam Ammal*[3], holds that the marriage state being the chief foundation on which the superstructure of society rests presumption of marriage arising from cohabitation of a man and a woman for a long time is a very strong one, that this presumption of law is not to be repelled on a mere balance of probabilities; that the weight of the presumption is strengthened when it is proved that the party whose marriage is questioned distinctly intended to marry and went through a form of marriage with that intention and the parties subsequently lived together as man and wife and were regarded as such among those who knew them; that the presumption is not only with regard to the factum of marriage but also with regard to the performance of the requisite ceremonies to constitute a valid marriage, that when once it is proved that the marriage was performed, the presumption arises that it is valid in law, that a blending by the father in a Hindu joint family of his self-acquisition only means that the father has abandoned his separate rights in favour of all the coparceners who constituted the joint family; that Hindu law does not permit a blending confining it in favour of some only of the coparceners and blending can be only in favour of the entire body of coparceners; that a release or renunciation by a coparcener, though in form it is in favour of one of the coparceners, should be regarded as a renunciation in favour of the entire body on the reasoning that the legal effect of renunciation is extinction and reduction of the

1 (1968) 2 M L J. 451.
2. (1968) 1 M.L.J. (S C) 55.
3. (1968) 2 M L.J. 411.

number of members to whom shares will have to be allotted if and when a division takes place; and that the renunciation by a coparcener of his interest in the joint family properties makes him a divided member from the rest, on the principle that when a person is a member of a joint family he is joint in estate, mess and worship with the rest of the members of the joint family and when he renounces his interest there is thereafter no jointness in estate between himself on the one hand and the other members of the family on the other In *Palaniappa Chettiar* v *Commissioner of Income-tax*[1], the Supreme Court holds that where a joint family had control only of 90 out of 300 shares in a business, the shares having been purchased in the course of business and not for the purpose of qualification of the *kartha* to become a director, and they had been purchased eight years before the *kartha* was appointed as the managing director of the business, there was no real connection between the investment of the joint family funds in the purchase of shares and the appointment of the *kartha* as the managing director and the remuneration earned by him in that capacity would not constitute income appertaining to the Hindu joint family *Loganathan* v *Ponnuswami Naicker*[2], stresses that under the Hindu Law the son is under a pious obligation to discharge his father's debts out of his ancestral property even if he had not been benefited by the debts provided they were not avyavaharika, the son gets exonerated from the obligation only if the debt was one tainted with immorality or illegality, the duty cast on the son being religious and moral the liability of the son for the debt must be examined with reference to its character when the debt was first incurred; and if at the inception there was nothing illegal or repugnant to good morals the subsequent dishonesty of the father in not discharging his obligation will not absolve the son from his liability for the debt *Sinnaraj Pillai* v *Ramayee Ammal*[3], states that it is well-established that the principle of joint tenancy is unknown to Hindu law except in the case of joint property of a Hindu undivided family governed by the Mitakshara law, which under that law passes by survivorship, but that does not mean that there can never be a bequest to be taken by two persons jointly, and that it all depends on the intention of the testator as could be gathered from the language of the instrument and the surrounding circumstances *Kumarappa Chettiar* v *Ramana Gounder*[4], lays down that when once the father has been discharged under section 44 (1) of the Provincial Insolvency Act, section 44 (3) cannot be made applicable against the sons who are members of a Hindu joint family with their father when they are sued on the same debt; and that therefore, the order of discharge will put an end to the liablity of the sons in respect of the debts due and payable by the father. *Tiruvannamalai Ammal* v *Sadasiva Mudali*[5], lays down that where in a suit filed by the wife of the manager of a Hindu joint family against her husband in his capacity as the manager, a decree for maintenance is passed, it will be binding on the entire joint family and a valid charge could be created against the joint family properties for the maintenance claim; the contention that the decree would not be binding on the coparceners who were not *eo nomine* parties to the suit or decree is untenable, such a charge is not defeated by any subsequent partition effected among the members of the family, and it cannot be contended that by virtue of the fact that the members are seeking a partition of their shares from that of the manager, the maintenance decree could not thereafter operate against their shares and that the operation of the charge must be restricted only to the share of the manager of the joint family.

[*To be continued.*]

1. (1968) 1 M L J. (S C) 90.
2. (1968) 1 M L J. 422
3. (1968) 2 M.L.J. 639.
4. (1968) 2 M L J 542.
5. (1968) 2 M.L.J. 569.

LAW OF EVIDENCE.

Kandaswami, In re[1], expresses the view that the prosecution must establish an offence by independent evidence and if once the offence is established a confession can be taken into consideration to find out as to who the offender is; but the prosecution cannot depend on the confession alone to prove the offence. *Natesan, In re*[2], points out that if the first information given to a Police Officer amounts to a confession, if any incriminating fact mentioned therein has got a bearing either directly or indirectly with the confession, such fact, even though it may be an admission, will be inadmissible, if, on the other hand, the first information does not amount to a confession any admission made therein can be proved under section 21 of the Evidence Act. In *K V Subbaraju* v *C. Subbaraju*[3], the Supreme Court holds that though section 32 (5), if construed literally, would make it possible to contend that a statement regarding the age of a person is not one relating to the existence of any relationship by blood, marriage, or adoption such a literal construction is not a proper one and a statement as regards age is tantamount to a statement as to the existence of relationship *Kamalambal* v *Srinivasa Odayar*[4], decides that where the plaintiff in his evidence had stated that his mother gave him the names in the pedigree and relationship for performing the ceremony, the alleged statement of the mother may come within the scope of section 32 (5) if it was proved independently of the plaintiff's evidence that the plaintiff's mother had made such a statement but not on the evidence of the plaintiff as such *Narasimhan* v *Narayana Chettiar*[5], points out that the handwriting expert is after all a witness of a particular party, and a party cannot be compelled to choose a witness according to the dictation of the opposite party; that the practice of sending original documents to the expert is a highly objectionable and bad procedure; and that the proper procedure would be only to permit the expert to inspect the document in the Court premises itself in the presence of some responsible officer of the Court and also, if necessary to permit the expert to have photographic copies of documents in the presence of a responsible officer of the Court In *K V Subbaraju* v *C Subbaraju*[3], the Supreme Court makes it clear that where the original will is in the custody of one of the parties and is suppressed by him a certified copy of it produced from proper custody by the opposite party would be admissible as secondary evidence under section 65; that if the document produced is a copy admitted under section 65 and it is produced from proper custody and is over 30 years old, only the signature authenticating the copy can be presumed to be genuine; that in such a case, the Court cannot, relying on section 90, draw the presumption of due execution of the original document, since the presumption under section 90 arises only in respect of the production of original documents; and that where only a copy of a will is produced and not the original, the Court cannot draw the presumption that the will, being more than 30 years old, was duly executed and attested by the persons by whom it was purported to have been executed and attested, but the effect of a secondary copy of the will rightly admitted as secondary evidence would be as if the contents of the will were before the Court and the Court could proceed to construe those contents. *Ponnumuthu* v. *Krishnan Nadar*[6], states that in regard to public records which are maintained with regularity, in the ordinary course of routine) they should be presumed to show official acts regularly and correctly performed until the contrary is proved. *Srinivasan* v. *Prescribed Judicial Authority*[7], holds that the benefit of the presumption under section 114, Illustration (*e*), cannot be invoked where the disqualification pleaded will have to be established. *Rajendran* v. *Revenue Divisional and Land Acquisition Authority*[8], lays down that considering the context of the land acquisition proceedings which preceded immediately before and the name of the addressee as the Revenue Divisional Officer noted on the two covers posted on the same date (but within six weeks' time from the date of the notice of

1 (1968) 1 M L J. 372.
2. (1968) 1 M L J 304.
3. (1968) 2 M L J (S C) 75.
4. (1968) 2 M L.J. 487.
5. (1968) 2 M L J. 48.
6 (1968) 2 M L.J 224.
7. (1968) 1 M.L.J. 403.
8. (1968) 2 M.L.J. 302.

the award as required) in respect of which a certificate of posting had been obtained, the inference can be drawn that the letters had reference to the awards passed on the same date in the two cases concerned, and that what he had posted under the certificate of posting was the originals of the application for Reference under section 18, Land Acquisition Act, a copy of which he sent subsequently by registered post; and that the petitioner is entitled to the presumption that in normal course of things the applications must have reached their destination through post, namely, the Revenue Divisional Officer. *Ramaswami Chettiar* v. *Mahadevan*[1], makes it clear that in respect of privileged documents the privilege can be claimed only by the public servant concerned under section 124, and it is not open to private parties to claim privilege.

LIMITATION.

In *Venkataramana Iyengar Dharmasthapanam v. Rangaswami Naidu*[2], it is held that the fact that the plaintiff had earlier filed a suit for the same relief and got a decree which was later on set aside would help him to claim that in any event the period between the date on which he obtained the decree in the earlier suit and the date on which it was set aside could be excluded in calculating the new period of limitation. *Trustees of the Port of Madras* v. *Mettur Chemical and Industries Ltd*[3] points out that a particular section can be considered to be expressly excluded only if there are specific words to the effect excluding the applicability of the section, that the language and meaning of the words " expressly excluded " in section 15 (2) of the Limitation Act cannot be whittled down, and however imperative the time limit under section 110 of the Madras Port Trust Act maybe it is only inferentially or by implication that section 15 (2) of the Limitation Act may be said to be excluded and an outer limit fixed and that section 110 of the Port Trust Act provides for a period of limitation different from that indicated under the Limitation Act; and it will be open to the plaintiffs in the absence of express esclusion of the applicability of section 15 (2) of the Limitation Act to rely upon the provisions of the latter section in computing the period. *Vellayya Gounder* v. *Venkatesa Chettiar*[4], decides that in the absence of anything to show that the acknowledging partner had authority to acknowledge on behalf of the silent partner also the mere fact that one partner purported to sign on behalf of the other partner also would not save limitation in respect of a claim as against the other partner *Syed Ibrahim* v *Jalma*[5], makes it clear that the expression " to institute" has got a definite connotation in law, that in relation to any proceeding there can be only one institution and that is when the machinery is set in motion and proceedings are instituted or initiated; and that is why section 21 (1) of the Limitation Act 1963, provides that the suit will be deemed to have been instituted on the date when the legal representatives had been made parties to the suit. *Ramaswami Naicker* v *Ganapathiammal*[6], states that where properties are vested in a person absolutely for certain specific purposes and for the discharge of particular obligations and not merely by virtue of his office he becomes an express trustee and a suit to enforce the obligations falls under section 10 and is not governed by Article 123. *State of Madras* v. *T. Raman*[7], holds that any person who claims to be the owner of the property will be entitled to file a suit for recovery of the same from anybody else who may be found to be in possession thereof without the authority of law or sanction of the law and such a suit cannot be said to be a suit for compensation for wrongful act committed by any person; and that when a suit is one for the recovery of movable property *in specie* or in the alternative for its value, neither Article 2 nor Article 29 of the Limitation Act of 1908 can have any application and the only Article which will apply to such a suit is Article 49 *Narayana Chettiar* v. *Rangaswamy Naidu*[8], lays down that if the mortgage money had fallen due for redemption at the end of a certain period, equally for the recovery of the money on the personal covenant it should, in the circumstances, be held to have fallen due at the

1. (1968) 2 M L J. 393.
2. (1968) 2 M L J. 8.
3. (1968) 1 M.L J. 162.
4. (1968) 2 M.L.J. 101.
5. (1968) 2 M L J 83
6 (1968) 1 M L J 508.
7. (1968) 2 M L J. 586.
8. (1968) 2 M.L.J. 445.

same time *Veeraswami Mandiri* v *Manicka Mudaliar*[1], decides that where property belonging to the plaintiff and his brother had been usufructuarily mortgaged and a creditor of the plaintiff's brother in execution of a decree against him purchased the entire property in Court auction subject to the usufructuary mortgage, redeemed the mortgage and entered on possession and thereafter sold the property and the transferee was in possession for over 20 years following such sale to the knowledge of the plaintiff, a suit for redemption by the plaintiff would be barred under Article 134, and even if Article 144 applied the action would still be barred.

CIVIL PROCEDURE CODE.

In *Govindaswami Pillai* v *Srinivasa Chettiar*[2], it is pointed out that the question of jurisdiction is really a matter between a party and a Court and not a matter between the parties to the suit; that whether a particular party raises the question regarding the want of jurisdiction of a Court or not, it is the duty of the Court to take note of the statutory provisions conferring jurisdiction on it or taking away jurisdiction from it; and that if under the law the Court has no jurisdiction no amount of consent, acquiescence or assertion on the part of any of the parties can confer jurisdiction on it. *Samba Nataraja* v *Kalyana Sabesa*[3], holds that when a plea is put forward that in any matter the jurisdiction of the civil Court to entertain a suit is barred the question has to be examined bearing in mind the general presumption in favour of jurisdiction of the civil Court, and a person's right to resort to a civil Court should not be whittled down unless it is expressly or by necessary implication barred; and that where on the failure of the plaintiff, a *Podu Deekshidar*, of Sri Sabanayakar Temple to keep a newly introduced temple watch-turn he was fined, and on failure to pay the fine, his right as *Podu Deekshidar* was auctioned away and sold to another *Podu Deekshidar*, a suit by him for a declaration of his rights and for injunction is competent and is not barred by section 49 read with section 93 of the Madras Hindu Religious and Charitable Endowments Act. *Messrs Isherdas Sahni & Sons* v. *Rajeswara Rao*[4], decides that a party aggrieved by a decision of the Commissioner of Police refusing to renew a licence for running a Cinema theatre on the ground that he was not in lawful possession of the theatre within the meaning of Rule 13 of the Madras Cinema Regulation Rules has a right to file a suit in the civil Court to establish his right to the possession of the building where the rival claimant before the Commissioner had denied such a right *State of Madras* v *T Raman*[5], states that an order of the Magistrate under section 517 of the Criminal Procedure Code directing confiscation of goods does not decide any question of title to the goods as he is merely concerned with deciding the right to the immediate possession of the goods, and the order does not prevent a person claiming to be the real owner of the goods from agitating his title to them in a civil Court *Muthukumaraswami Pillai* v. *Srimushnam Vedapatasalai*[6], takes the view that to oust the jurisdiction of the civil Court words of express import or significant expressions necessarily implying such ouster are required, that when Tribunals created by statute are vested with certain functions and their ultimate decisions in regard to the same are not to be questioned it could only be said that the civil Courts ought not to entertain any *lis* in regard to the same; that it would be a totally different thing to say that for all purposes there is an ouster of jurisdiction of civil Courts even in matters within their exclusive competence, and that where the suit lands formed part of an erstwhile inam estate notified under Madras Act XXVI of 1963, a suit by the landholder for possession of the lands in the occupation of a tenant and for other ancillary reliefs filed after the notification and before obtaining a ryotwari patta on the ground that the suit lands were the private lands of the landholder can be entertained by the civil Court *Santhana Gopala Chettiar* v. *Seetharama Chettiar*[7], lays down that a civil suit for rendition of accounts against the trustees of a temple appointed by the members of a community, is not barred by any of the provisions of the Madras Hindu Religious and Charita-

1. (1968) 2 M L J 108
2. (1968) 2 M L.J 367.
3. (1968) 1 M L J 153.
4. (1968) 2 M.L J. 233.
5. (1968) 2 M L.J 586.
6. (1968) 2 M L J 463
7. (1968) 2 M L J. 41.

ble Endowments Act, 1959, though when the applicability of the provisions of the Act to a temple is challenged, the Deputy Commissioner has jurisdiction to decide the matter under section 63 (*a*) of the Act, and consequently, a suit filed in a civil Court claiming certain reliefs on the basis that the provisions of the Act do not apply to the suit temple would be barred by that provision. *Kanthammal* v. *Venkatakrishna Reddiar*[1], decides that where an alienation was made by two persons, and a creditor-decree-holder of one of them filed a claim suit against the judgment-debtor and his vendee—the other alienor not being a party—and the finding in the claim suit (which was upheld in second appeal) was that the alienation was not true and was in fraud of creditors, and the other alienor meanwhile settled his share in the alienated property on his daughter-in-law, in a subsequent suit by the defeated party in the claim suit for a declaration of his title, the finding in the claim suit will be binding on him though the Court might have considered only whether transaction was fraudulent in character and the subsequent suit will be barred by *res judicata* *Amaravathi Ammal* v. *Peryanayagammal*[2], points out that the conclusivensess contemplated by section 11 of the Oaths Act is confined only to the particular proceeding in which the oath-taking took place, and that while the oath taken in the earlier litigation which should be conclusive against the challenging party may be evidence in the subsequent proceeding it will not be conclusive evidence and no question of *res jdukata* will arise *Eustace* v. *General Manager, Southern Railway*[3] states that where the Railway Administration suspended the petitioner for misconduct and started disciplinary proceedings against him which, however, were abandoned later and his services terminated under Rule 149 of the Railway Establishment Code, Vol. 1, but on the rule being struck down by the Supreme Court as unconstitutional in some other proceeding, the petitioner was reinstated and fresh departmental proceedings were initiated against him, the principle of *res judicata* cannot be applied to the facts of the case, and even assuming that the principle of *res judicata* would apply also to domestic or departmental enquires it cannot be said in the instant case that there was any prior decision in the matter. In *Virudhunagar S. R Mills Ltd.* v. *Government of Madras*[4], the Supreme Court lays down that when once a petition under Article 226 of the Constitution is dismissed it will operate as a bar to the petitioner seeking the same relief under Article 32 before the Supreme Court and the principle of *res judicata* will apply to such cases *Marudanayagam Pillai* v. *Venkataswami Naidu*[5] expresses the view that where the decree holder takes in execution land included in the decree or in excess of the decree, the judgment-debtor must apply under section 47, Civil Procedure Code for recovery of such land and a separate suit for the purpose will not lie. *Tirvandrum Permanent Fund* v *Md Mohideen*[6], points out that an order dispensing with the furnishing of security by the respondent (applicant under Order 21, rule 90) affects the rights of the parties, and the matter being one in relation to the execution and satisfaction of the decree falls under section 47 and an appeal under that section is therefore competent. *Rangaswami Naicker* v *Rangammal*[7], holds that when the appellant claims to be the legal representative of the decree-holder and further claims to be entitled to execute the decree in that capacity, the question has necessarily to be tried under section 47 by the executing Court, that section 47 (2) no doubt says that the executing Court may treat a proceeding under that section as a suit, but where the question is primarily one relating to execution there is no need to convert it into a suit, and that, apart from this, there is no provision of law which ousts the jurisdiction of the executing Court under section 47, Civil Procedure Code *Santhanagopala Chettiar* v. *Seetharama Chettiar*[8], expresses the view that the argument that when the Commissioner of the Madras Hindu Religious and Charitable Endowments is functioning in relation to matters under the Act he functions not as a public officer or as a Government servant but as a judicial officer and that consequently no notice to him is necessary under sction 80, Civil Procedur Code is not tenable *Ammasai Gounder* v. *Ravala*

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1. (1968) 1 M L J 1
2. (1968) 1 M L J 272.
3. (1968) 1 M L J. 208.
4. (1968) 2 M.L.J. (S.C.) 92.
5. (1968) 2 M L J 472.
6. (1968) 2 M L J 377
7 (1968) 2 M L J 610.
8. (1968) 2 M.L.J. 41.

Gounder[1], states that, where a finding is not supported by any evidence on record, section 100 does not preclude interference with it in second appeal *Chidambara Thevar* v *Vedayya Thevar*[2], holds that whether on the facts found the conclusion of a customary right could be drawn is a question of fact which can well be considered by the High Court unfettered by the restrictions of section 100 *Saradambal* v. *Arunachalam*[3], observes that under section 105, Civil Procedure Code, it is open to party not to prefer an appeal against an order which is appealable under the Code and yet to challenge its correctness in an appeal preferred against the final decree where the order has affected the decision of the case, and by virtue of section 108 the provisions of section 105 will apply to the case of an appeal against the final order also *State of Madras* v *Ramanath Rao*[4], lays down that the powers of the High Court under section 115 are intended to subserve and not to defeat the ends of justice; that when substantial justice has been done by the Court be low the High Court will not interfere in revision notwithstanding that the reasons given by the Court below for the impugned order are not correct, and interference will be warranted only if injustice or hardship would result from failure to interfere *Bhagawathi Mudaliar* v *Subramaniam*[5], expresses the view that errors of fact and even errors of law cannot be canvassed in revision unless such errors have affected the jurisdiction of the Court; still, when there is total absence of legal evidence for a finding by the lower Court it would amount to an exercise of jurisdiction illegally or with material irregularity justifying interference under section 115 of the Code *Arunachalam* v. *Srinivasan*[6], holds that a revision petition can be entertained by the High Court against the order of the Rent Controller passed under section 18 (3) of the Madras Buildings (Lease and Rent Control) Rules, 1961, setting aside an order dismissing the petition for default, and that where an order of the Rent Controller is non-speaking and does not state whether sufficient cause has been shown by the landlord for his absence and whether the Rent Controller was satisfied about the absence of the landlord when the petition was called, the order of the Rent Controller setting aside the dismissal is liable to be interfered with under section 115 *Dhanraj* v *Sarojini*[7], points out that the words "material irregularity" in section 115 (*c*) should be construed as committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision, and that so long as the lower Court had jurisdiction to decide the question the mere fact that the Court decided the case wrongly either in law or in fact will not in itself amount to acting illegally or with material irregularity *Unnamalai Achi* v *Umayal Achi*[8], makes it clear that an injunction could be issued under section 151 of the Code in a suitable case even though the case does not fall within the terms of Order 39, rules 1 and 2 but it would be contrary to the intention of the Legislature to issue an injunction preventing a person from executing his decree so as to enable another to apply for rateable distribution under section 73, that the issue of an injunction should neither conflict with the express provisions of the Code nor go against the intentions of the Legislature; and that the issue of an injunction should not affect the substantive rights of the party against whom it is issued. *Firm Mahadeva Rice and Oil Mills* v. *Chennimalai*[9], states that the following test may be formulated usefully as a guidance in the case of adding parties under Order 1, rule 10 (*i*) If for the adjudication of the 'real controversy' between the parties on record, the presence of a third party is necessary then he can be impleaded, (*ii*) It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest thereby avoiding multiplicity of suits over a subject-matter which could still be decided in the pending suit itself; (*iii*) The proposed party has a defined, subsisting, direct and substantive interest in the litigation, which interest is either legal or equitable and which right is cognisable in law, (*iv*) Meticulous care should be taken to avoid the adding of a

1 (1968) 2 M L J 90
2. (1968) 1 M L J 110
3. (1968) 2 M L J 266
4 (1968) 2 M L J 164
5. (1968) 2 M L.J. 490.
6 (1968) 1 M L J 435
7 (1968) 1 M L J 390
8 (1968) 2 M L J 544.
9. (1968) 1 M L.J. 15.

party if it is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record which is neither necessary nor expedient to be considered by the Court in the pending litigation ; and (*v*) It should always be remembered that consideable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by the Court by adding a new party whose interest has no nexus to the subject-matter of the suit. *Munidandi* v *Selvarajan*[1] points out that Order 8-A is an exception to the broad procedural principle that in civil litigation the plaintiff is the *dominus litis* ; that Order 8-A in fact prescribes a special method by which a party defendant could secure relief without independently filing a suit against a third party to the suit if he makes out a case that such third party is bound to indemnify him in connection with the suit transaction , that if the party who is legitimately entitled to press into service Order 8-A were to be driven to an independent suit there is likelihood of a conflict of decisions as well, not to speak of multiplicity of proceedings ; and that it is essentially to avoid such conflict and multiplicity that Order 8-A has been provided particularly in a very detailed way in our State *State of Madras* v. *Ramanath Rao*[2], points out that there is no provision of law precluding the Court from reconsidering a matter and passing a final decree for mesne profits found accrued and that Order 20, rule 12 (3) does not contemplate any application for the purpose. *Rajangam Ayyar* v. *Natesa Chettiar*[3], makes it clear that there can be more than one preliminary decree and more than one final decree ; that unless the plaintiff's prayer for mesne profits had been specifically considered and refused it was open to the Court to entertain a subsequent application for mesne profits, after the passing of the preliminary decree and before the passing of the final decree ; that, where the preliminary decree provides for mesne profits and the final decree does not, it will be open to the Court to pass another final decree after ascertainment of mesne profits; and that a suit cannot be said to have been finally disposed of until all the prayers in the plaint have either been granted or specifically refused. *M A.A. Raoof* v. *K G. Lakshmi Pathi*[4], holds that it is section 51 which gives jurisdiction to the Court to attach and sell shares and Order 21, rule 46 only prescribes the mode of attachment though the provisions thereof may have to be borne in mind in determining the question of jurisdiction; that the principle underlying section 51 (*b*), is that, if the property sought to be attached is within the limits of the jurisdiction of the Court, the Court can attach and sell the property, that is reinforced by the provisions of sections 39 and 46 of the Code which provide for the transfer of the decree to a Court within whose limits the property sought to be attached and sold is situate ; that there is nothing in Order 21, rule 46 to contradict this result and under that provision also the criterion would seem to be only the residence of the judgment-debtor against whom the prohibitory order is to be made from transferring the shares or receiving any dividend therefrom; that the provisions laid down in Order 21, rule 46 in the case of attachment of a share are materially different from the provision relating to a debt ; and that, though sub-rule (1) makes a distinction between the three classs, namely, a debt, a share, and other movable property and prescribes a separate procedure for each, sub-rule (2) clubs them all together in respect of affixture or despatch of the copy of the prohibitory order thereby indicating that sub-rule (2) is only an ancillary provision and that the main provision is sub-rule (1) on the question of jurisdiction *Nayagamma* v *Plantain Merchants Association*[5], decides that if sub-tenants are made parties an order of eviction would be binding on them of its own force and execution could be levied under Order 21, rule 35, but if the sub-tenants are not made parties to the eviction application, they will not be parties to the order and any obstruction to delivery in execution will fall only under Order 21, rule 98 ; and the rights of a sub-tenant who has not been made a party are sufficiently protected by the general provisions contained in Order 21, rules 98 to 103. *Jagajothi Mudaliar* v *Gopalaswami Goundar*[6], states that where a person purchases an undivided share in Hindu joint family property in Court auction and gets symbolical delivery, such possession interrupts the adverse possession of the party by

1. (1968) 2 M L J 12
2. (1968) 2 M L J. 164
3. (1968) 2 M.L.J. 282.
4. (1968) 2 M L J 634
5. (1968) 1 M L J 386.
6. (1968) 2 M.L.J. 303.

the other party. In *S. Ramachandra Rao* v *M. Kutumba Rao*[1], the Supreme Court makes it clear that if at the time an application under Order 21, rule 89 is made by the judgment-debtor the decree has been satisfied or adjusted, the deposit of any money for payment to the decree-holder is not called for, but where the decree-holder has only agreed to stay his hands in case any satisfactory provision is made for payment of his dues there is no adjustment of the decree which could be recorded under Order 21, rule 2 and the decree is kept alive and it cannot be said that the judgment-debtor is absolved from the obligation to deposit the money under Order 21, rule 89 (*b*) *Saradambal* v *Arunachalam*[2], holds that Order 21, rule 90 applies to every case where an immovable property has been sold, whether in execution of a mortgage decree or any other decree and the language does not warrant any distinction being made between the sale of immovable property in execution of a mortgage decree and that in execution of any other decree. *Permanent Fund* v *Md Mohideen*[3], states that an order directing the respondent (applicant under Order 21, rule 90) to furnish security is an order prejudicial to him and cannot be passed without giving him an opportunity to show cause prior to the passing of the order ; and that under Order 21, rule 92 read with Order 43, rule 1 (*f*) an appeal lies only against an order setting aside a sale or confirming a sale after disallowing an application to set aside the sale. *Minor Sivaraman* v. *Shanmughasundara Mudaliar*[4], expresses the view that there is nothing in Order 21, rule 103 to show that it requires an unsuccessful party to establish his right within a year, that it only requires an unsuccessful party to file a suit within a year to establish the right claimed, and that it would be adding to the rule to state that the summary order would be conclusive subject to the result of a pending suit only if a decision of a competent Court in a pending suit is obtained within one year. *S. C. Karayalar* v. *V. Karayalar*[5], points out that in the appointment of a guardian or a next friend to a person, the Court has to judicially enquire whether it is necesary in the interests of justice, and the Court cannot dispense with the judicial enquiry contemplated under Order 32, rule 15, and that consent cannot vest jurisdiction in the Court to dislodge or divest the right of a litigant to conduct his suit by superimposing a guardian or next friend *Lakshminarayana* v. *Premier Bank of India*[6], holds that the combined effect of rules 5, 6 and 7 of Order 33 is that if the Court is satisfied in the first instance that an application *in forma pauperis* is in proper form and is duly presented, it can, if it thinks fit, examine the applicant on the merits of his claim and his property ; that at that stage, the opposite party has no *locus standi* ; and that if the Court sees no reason to reject the application on a *prima facie* perusal of it, then it has to give notice to the other parties, fix a date for receiving such evidence as the applicant may adduce to prove that his application is not subject to any of the prohibitions mentioned in rule 5 and at this stage the opposite party is entitled to let in rebutting evidence to the contrary. *Subramanian* v. *Kaliammal*[7], lays down that before an appellate Court can remand a matter for fresh disposal to the lower Court under Order 41, rule 23, first it must come to a conclusion that the decision of the trial Court is liable to be reversed or set aside and in the absence of such a conclusion, a power of remand is not available to an appellate Court ; and the the words "in the interests of justice" do not widen the power of the appellate Court to remand a suit in the sense that irrespective of the fact whether it comes to the conclusion that the judgment and decree of the trial Court are liable to be reversed or not if the appellate Court is of opinion that the interests of justice require that there should be a fresh trial it can remand the suit for fresh disposal *Kanni* v. *Viswanatha Chettiar*[8], decides that a Court which entertains an application for leave to appeal *in forma pauperis* under Order 44, rule 1 and issues a notice to the opposite party without rejecting it under Order 44, rule 1 (2), cannot after hearing the opposite party rescind its order to entertain the application on the ground that at that stage it is of the opinion that it ought to be rejected because the decree appealed

1. (1968) 1 M L J (S C) 66
2. (1968) 2 M L J 266
3. (1968) 2 M L J 377.
4. (1968) 2 M.L.J. 284.
5. (1968) 2 M L J 151.
6. (1968) 1 M.L J 333.
7. (1968) 2 M L J. 548
8. (1968) 2 M.L.J. 352.

from is not contrary to law or to some usage having the force of law or is otherwise erroneous or unjust.

PENAL CODE.

In *In re Walcott*[1], it is held that ' legal right,' in its strict sense, is an assertable claim, and in its wider sense, an advantage or benefit conferred upon a person by a rule of law, that a legal right may be recognised but may not be enforceable, that it is really a capacity of asserting a secured interest rather than a claim that could be asserted in the Courts, that a legal right is one which is either enforceable or recognised; and that a passport creates a legal right as mentioned in section 30, Penal Code, and is, therefore, a valuable security. *Lakshmiammal* v. *Samiappa Gounder*[2], expresses the view that under section 146 the gravamen of the offence is the use of force or violence, that violence is not restricted to force used against person only but extends also to force against inanimate objects, that where five or more persons with the common object of causing mischief to water pipes belonging to another causes violence to them by breaking them, they will be guilty of rioting under section 146, that if, in so doing, they are also armed with weapons like knife, hammer, crowbar and spades they would undoubtedly be guilty of the offence of rioting with deadly weapons under section 148, and that the test is not the purpose for which they were carried but the nature of the weapons which is such that if used as weapons of offence they are likely to cause death. *Gnanamuthu, In re*[3], expresses the view that in regard to an offence under section 147 even though 22 persons were charged before the Trial Court and 19 of them were acquitted it was open to the Trial Court and the lower Appellate Court to find that not merely those 22 persons but a number of other persons were also involved in the commission of the offence which the accused before the Court were charged with, and if it had been so found, the fact that 19 persons had been acquitted and only three had been convicted would not mean that there is any legal objection to such a conviction. *Chelpark Co Ltd.* v *Commissioner of Police*[4], states that whether the act of remaining after the working hours in the factory by striking workmen will amount to criminal trespass as defined in section 441 will depend upon the fact whether they had the intention to commit an offence, or to intimidate, insult, or annoy the employer thereby, and that where the striking workmen not only refused to receive the order of interim injunction granted by the Court restraining them from collecting themselves in the factory premises after the working hours, preventing the employer from closing the premises, obstructing the female employees from leaving the premises, indulging in insulting the members of the staff, and intimidating non-striking workmen including women by using provocative language likely to lead to breach of peace, every act done by them was liable to fall within the mischief of section 441. *D H Walcott, In re*[1], points out that to constitute the offence of forgery the concerned document or a part of it must be false in fact, that it must have been made dishonestly or fraudulently within the meaning of the words as used in section 464 and it must have been made with one of the intents specified under section 463; that the word ' fraud ' must be understood in its general and popular sense; and that it involves the element of deceit and injury caused or likely to be caused to the person deceived or some one else in consequence of the deception. *Pothilingam Pillai* v. *Nagore Meeran Rowther*[5], lays down that the term " trade mark " as used in the Penal Code is not known to English law, that the Penal Code distinguishes a trade mark from a property mark, that the former denotes the manufacture or quality of the goods to which it is attached while the latter denotes the proprietor of them, and that where the respondent complained only of infringement of his property mark by reason of the conduct of the petitioners in trying to pass off their goods as his goods by adopting the property mark of the respondent the contention that the Sub-Magistrate has no jurisdiction to entertain the complaints under sections 482 and 486 relating to infringement of property marks cannot be accepted *Chelliah* v *Rajeswari*[6], holds that describing a woman

1. (1968) 1 M L J 229
2. (1968) 1 M L J 226
3. (1968) 2 M.L.J. 292.
4. (1968) 1 M L J 458.
5. (1968) 2 M L J 469.
6. (1968) 2 M.L.J. 441.

that she has paramours wherever she goes is scandalous and will bring down the reputation of the woman concerned to a considerable extent in the eyes of the public and is *per se* defamatory, and that once the petitioner admitted that he was responsible for the defamatory statement it is for him to discharge the burden while claiming the benefit of Exception 9 to section 499 that he made the allegation in good faith.

CRIMINAL PROCEDURE CODE.

In *Paramasivam Chettiar* v. *State*[1], it is made clear that, under section 10 (1) Criminal Procedure Code, the State Government can appoint a Magistrate of the First Class who will be called the District Magistrate; that, under section 10 (2), the State Government may confer all or any of the powers *under the Code* exercisable by the District Magistrate of the district by virtue of his appointment under section 10 (1), that the expression " all the powers under the Code " will mean the powers conferred on the District Magistrate under any provision in the Criminal Procedure Code; and that the powers are not limited only to those enumerated in the Schedule and will include the power to give sanction. *Doraikannu Padayachi* v. *Kaliaperumal Padayachi*[2], states that section 148 (3) does not say that costs must be awarded at the time when the original order is made, that what it says is that the Magistrate passing a decision under section 145 may direct by whom costs shall be paid and there is nothing improper for a Court to award costs even subsequent to the order passed under section 145; but such application must be made within a reasonable time and it will depend very much upon the discretion of the Courts which must be fairly and judicially exercised. *Sirajuddin* v. *Government of Madras*[3], points out that the object of sections 161 and 162 and the prohibition laid therein is to protect accused persons from being prejudiced by statements made to police officers; that Courts have always regarded any breach of the provisions of section 162 as a matter of gravity; that violation of the mandatory provisions of sections 162 and 163 will not only impair the evidentiary value of the statements recorded in contravention thereof but will also impair the evidence given on oath based on such statements even though such evidence may be judicially recorded under section 164; that statements recorded during an investigation, if they violate the safeguards provided in sections 161 and 162, cannot be considered at the stage of framing charge under section 251-A; that while every inquiry started on vague information may not be an investigation so as to attract the safeguards provided under sections 161 and 162, any statement recorded subsequent to receipt of definite information of the commission of an offence in gathering evidence about it would be a statement recorded during investigation and will attract the provisions of section 162, and that statements recorded by inducement of assurances of immunity from prosecution to accomplices under section 8 of the Prevention of Corruption Act will be in violation of the provisions of section 162 and will vitiate the investigation. *Bhaktavatsalam* v *Govindarajulu*[4], holds that an order passed by the Commissioner of Police under section 173 cannot under any circumstances be a bar for a complaint by a party before a Magistrate who has jurisdiction to take cognisance of the complaint under section 190, that as a matter of fact it is the practice when the police give a notice to the party referring the case, such party is requested to file a complaint before the Magistrate if so advised; and that where there is no prior complaint before the Magistrate which resulted in a dismissal under section 203 the complaint filed by a person cannot be said to be an abuse of process *Sekharan In re*[5], lays down that a Sessions Judge is not bound by the charge as framed in the committal Court and if it is brought to his notice that the charges are erroneously framed and not warranted by the facts of the case or are imperfect the Judge can satisfy himself from the records and other materials available whether there is a case for altering or adding to the charges, that, however, sections 226 and 227 make it clear that the Judge cannot altogether omit a charge framed by the committal Court but must proceed with it and ultimately may acquit if the charge could not be sustained, and that there cannot be any objection on the same set of facts to alter a charge under section 307, Penal Code to an allied charge or to an inferior charge, if the records warrant it *K M Wahi* v. *Madras Aluminium Company Ltd*[6]. states that the inherent jurisdiction of the High Court can be exercised

1. (1968) 1 M.L.J. 255.
2. (1968) 2 M.L.J. 526.
3. (1968) 1 M.L.J. 480.
4. (1968) 2 M.L.J 321.
5. (1968) 2 M.L.J. 532.
6. (1968) 2.M.L.J. 589.

in quashing proceedings in three categories of cases, namely, (i) where it manifestly appears that there is a legal bar against the institution of the criminal proceeding in respect of the offence alleged, (ii) where the allegations in the First Information Report or the complaint do not constitute the offence alleged; and (iii) even where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge, that there is no legal bar for a person to take action against another by instituting civil or criminal proceedings either simultaneously or one after the other; that the contention that charges under sections 420 and 409 of the Penal Code cannot co-exist as the ingredients of both the offences are so distinct and different and that therefore a person cannot be charged with both the offences on the same facts is untenable; and that though a person cannot be convicted ultimately under both the charges there cannot be a bar for framing charges, though they may appear to be inconsistent, and after the trial it is for the Magistrate to consider which one of the offences is made out. *Sirajuddin* v. *Government of Madras*[1], decides that having regard to the object and scope of section 251-A a Court cannot ignore the irregularities and illegalities in the matter of investigation brought to its notice before the framing of the charge and the accused cannot be made to stand trial on charges made on materials gathered in violation of the provisions of the Code. *Abdul Kader, In re*[2], makes it clear that evidence admitted under section 288 is substantive evidence which does not require any corroboration, but evidence given in the committal Court which is not adhered to by the witness in the Sessions Court should not be lightly admitted by virtue of section 288 and it can be acted upon as substantive evidence only if the Court is completely satisfied that it is true; that the evidence brought on the records under section 288 can be made use of to corroborate a retracted confession; and that once the evidence before the committing Magistrate is admitted it stands exactly on the same level as any other evidence in the case. *Paramasivam Chettiar* v. *State*[3] points out that section 337 (1) with its proviso requires two conditions to be complied with in respect of tendering pardon by a First Class Magistrate during the investigation of an offence, (i) he must be a Magistrate having jurisdiction in a place where the offence might be enquired into or tried, and (ii) he must have obtained the sanction of the District Magistrate for tendering pardon. *D. H. Walcott, In re*[4] observes that from section 537 it is clear that no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed on appeal or revision on account of misjoinder of charges where no material prejudice was caused to the accused or occasioned a failure of justice. *Ramaswami Gounder, In re*,[5] decides that section 549 (1) has to be understood to mean that when a person is brought before the Court the Magistrate should have known that he is brought as a person subject to the provisions of the Indian Army Act, that without information of that nature it would be impossible for the Magistrate to follow the procedure under that section; and that if there is no material for the Magistrate to know that he was a serving sepoy subject to the provisions of the Army Act, it cannot be said that the procedure followed by him is wrong and it would be unfair to quash the proceedings and allow the accused to be tried by the Court-martial in view of the fact that he had served the full term of imprisonment. *Chelpark Co. Ltd.* v. *Commissioner of Police*[6], holds that under section 561-A the High Court has the widest jurisdiction to pass orders to secure the ends of justice; that if the High Court feels that in a particular case the ends of justice require that an order should be made on an application though such application is not contemplated by the Code it will entertain the application and make the necessary order to secure the ends of justice, that the High Court exercising its powers under section 561-A will take into consideration the gravity of the injustice brought to its notice and the non-availability of any effective remedy otherwise, that this power will be used sparingly in deserving cases; and that under this power the High Court can direct the executive where cognisable offences are committed or where there is threat to property and person to take appropriate action to secure the ends of justice.

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1. (1968) 1 M.L.J. 480.
2. (1968) 2 M.L.J. 515.
3. (1968) 1 M.L.J. 255.
4. (1968) 1 M.L.J. 229.
5. (1968) 2 M.L.J. 534.
6. (1968) 1 M.L.J. 458.